



Ten years after the implementation of SPLUMA: a critical review of the planning system in South Africa

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DEDICATION

This thesis is dedicated to my family.

PREFACE

A published article in an accredited journal was the product of this thesis. The details of the article are indicated here:

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The article is attached to this thesis as Annexure A.

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Jesus, my Rock and salvation, with Whom all things are possible. The Way, the Truth and the Life. Abba, Father, my provider and protector. Holy Spirit, healing and restoration. Thank you, Lord (Zech 4:6).

ABSTRACT

The spatial planning and land use management system is the world in which urban and regional planning is practiced and functions. The framework of this system was fundamentally changed with the implementation of Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), two years after it was promulgated, with an implementation target of five years.

This study considers the domain in which planning functions and determines the functional system in which urban and regional planning functions. The entrenchment of the system in its given domain provides perspective and highlights certain aspects of planning that should be considered in its functional system.

A reflection on the implementation of SPLUMA, through the lens of the local government project that implemented the said system and that stretched over four years, contributed to significant insights into the nuances entrenched in the planning system and emphasises certain issues that should have received more attention in planning and structure, as well as identifying certain gaps in the system. The administrative system in which planning functions, in terms of decision-making, is fully vested in local government in the foundational change brought about by SPLUMA and other mentioned influences, including the Constitution of 1996.

The physical administration of spatial planning, land use planning and management underwent a fundamental change upon the enactment and implementation of SPLUMA, partly because section 33(1) of this Act provides that the municipality is the body of first instance for land use applications. The structural and administrative change of decision-making and record-keeping moved from being a dual system of land-use administration, formerly shared by the provincial government and the local government, entirely to being the responsibility of the local government. This included the land use administration of traditional areas, mostly land owned by national government. This also implies that the historical division between urban, rural, traditional and agricultural areas have been unified under the municipal area in terms of the wall-to-wall land use scheme and subsequent land use planning and development administration. This follows the 1996 constitutional requirement that municipal areas cover the entire country.

This thesis considers the transformation of the spatial planning and land use planning administration and governance in terms of land use planning and development administration. It considers the legislative frameworks, before and after the promulgation of the Constitution of 1996, that inform land use planning and relevant to the transformation to the SPLUMA spatial planning and land use management system. The administrative effects that changing legislation and geographical structures have on the land use system are discussed.

Key terms: Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA); land use management system; municipal boundaries; land use planning; land; land use administration; municipalities; wall-to-wall land use schemes; municipal governance; urban edge

OPSOMMING

Sleuteltermes

Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA); stelsel vir grondgebruik en -bestuur; munisipale grensgebied; grondgebruik beplanning; grondgebruik administrasie; munisipaliteite; muur-tot-muur grondgebruik skemas of stads- en dorpsbeplanning skemas; munisipale bestuur; dorpsgrense.

LIST OF ABBREVIATIONS

NWU	North-West University (Abbreviation)
CLARA	The Communal Land Rights Act, Act 11 of 2004
IPILRA	The Interim Protection of Informal Land Rights Act, Act 31 of 1996
IGFR	Intergovernmental Fiscal Reviews
MPT	Municipal Planning Tribunal
NEMA	National Environmental Management Act, Act 107 of 1998
SACA	Sub-division of Agricultural Land Act, Act 7 of 1970
SADT	South African Development Trust
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act, Act 16 of 2013
TBVC	Transkei, Bophuthatswana, Venda and Ciskei
TRPJ	<i>Town and Regional Planning Journal</i>

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CHAPTER 1 INTRODUCTION

Goudappel (1980, 1981) states that the urban environment does not aim to become a theory but rather lend itself as a concept or a play of instruments: A concept because it declares nothing and does not pose a universal solution, but builds conditions for the background (context) and statutory framework (Professor J.J. [Das] Steyn).

Goudappel (1980, 1981) stel dit dat urbanistiek nie beoog om 'n teorie te wees nie, maar eerder as 'n konsep, of 'n spel of as 'n instrument wil dien: 'n Konsep omdat 'n konsep niks verklaar nie en geen universele oplossing gee nie, maar veral voorwaardes skep vir die soek van agtergronde en wetmatighede (Professor J.J. [Das] Steyn).

1.1 Introduction

This study analyses and reflects on what the planning system in South Africa is as well as its implementation. The implementation of the planning system is directly vested in the related legislative and governance frameworks. It considers the historical background and structural changes in the system and structure that enable sufficient considerations to develop the planning system in its implementation. Put simply, the changes in the planning structure and prescribed planning instruments used as the mechanism for the planning system, as per legislation, are of core concern. This is discussed in Chapters 3 and 4. The reflection of the physical implementation of this system on a Category B municipality (the largest number of municipalities within South Africa) demonstrates the practical complexity of the planning system.

This study produced an article "*SPLUMA: The transformation of land use planning administration and governance in South Africa*," which was published in the Potchefstroom Electronic Law Journal (PER/PELJ) during March 2025 (Heukelman and Cilliers, 2025), that was authored by the researcher of this thesis and her promotor. The article was the result of the reflection of the implementation of SPLUMA and its implications within the planning system that influenced the physical administration of planning and its structures in terms of the legislative framework that had to be practically implemented. The article indicate the specific implications and considerations which

formed part of this study that include the consideration of the previous planning system, the transformation of legislation and the fundamental changes brought to the structure of the planning system that was guided by the Constitution first in that the municipal areas had to cover the entire country, meaning the introduction of wall-to-wall municipalities and then in effect through SPLUMA, wall-to-wall land use schemes. The planning administration changed from provincial and municipal to entirely municipal authority in decision making and planning administration. Previously termed Town Planning Schemes that related to urban areas within the urban edge were changed to the wall-to-wall land use schemes, which included a few or several towns (urban areas with an urban edge), all traditional areas, agricultural land, nature reserves, border posts, and more that were previously administered by the provincial government. This shift developed over time, not without difficulty.

The planning profession was born from the need for planning urban environments, such as the industrial and commercial productivity developed, which underlined the need for the enhancement and preservation of quality of life where people and communities lived (Haverfield, 1913: 1,5; Cherry, 1993:3; Davoudi & Pendlebury, 2010: 615,618; Muller, 1993:5). Davoudi and Pendlebury (2010:615-616) hold the view that a profession can be empirically applied and a discipline is captured in a body of knowledge or epistemologically specific objects or concepts that is coherently understood. Planning as a discipline has had various influences from architecture, engineering, geography, land-surveying and more (Taylor, 1999: 330-340; Schoeman, 2010:2,5-6). It is frequently regarded as a trans- and inter-disciplinary profession. This means that there are other disciplines that inform the planning discipline in terms of the exchange of information, methods and epistemological principles that feed into a planning system to solve certain problems that are application oriented (adapted from van den Besselaar and Heimeriks (2001:706-707). In a visual interpretation in Figure 1, the interactive nature of related planning disciplines is used to form part of the planning process and demonstrate certain contextual and applied purposes in planning. Planning draws from and integrates several other related disciplines as per what the problem within the context needs (within the planning processes).

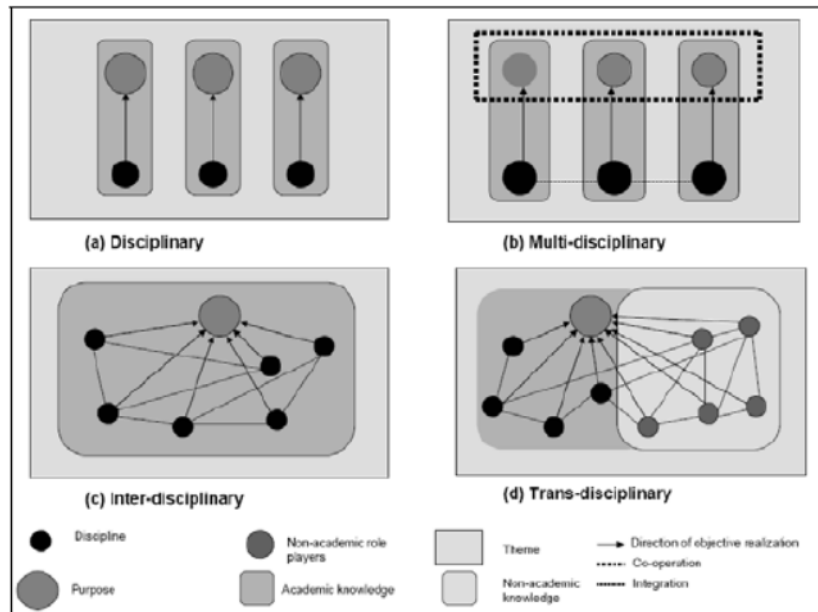


Figure 1: Scope of interdisciplinary approaches in the application of promoting a purpose. This is seen as the interface between disciplines and stakeholders of an applied purpose

Source: Schoeman (2010:15) and Cilliers (2019:10) as presented by Fry et al. (2007) and Cilliers (2008)

That having been said, Urban and Regional Planning is a discipline and regarded as a profession, an occupational application in South Africa and requires specific frameworks of knowledge to initiate and guide the development and application of a planner. The Planning Profession Act 36 of 2002 defines a planner as:

...a person who exercises skills and competencies in initiating and managing change in the built and natural environment in order to further human development and environmental sustainability as contemplated in section 2(a) and who is registered in one or more of the categories contemplated in section 13(4) (Planning Profession Act, 2002:6).

Section 2(a) of this act, as mentioned in the quotation, refers to the planning profession that requires knowledge and proficiency related to the management of change in the built and natural environments across a larger range of areas, that include urban and rural areas with different scales. Scales in this context refer to the geographic scales and sizes of settlements that include regions, sub-regions, cities, towns, villages and neighbourhoods. This all is intended for the purposes of advancing human development

and environmental sustainability. The knowledge requirements for a planner specifically include the regulation and management of land uses; the organisation of infrastructure, utilities, facilities and housing for human settlements; and then the co-ordination and integration of physical, economic and social sectors that are vested in human settlements. This is vested within the context of South Africa (RSA, 2002:6). This is discussed further in Chapter 2 in the discussion of the establishment of the domain of planning. The planning profession and discipline are instituted through South African legislation, which forms the framework for planning in the country (RSA, 2013; RSA, 2015, RSA, 2002). This will be discussed in Chapter 4 that outlines the legislative framework currently and previously.

The current Spatial Planning and Land Use Management system in South Africa is prescribed by the Spatial Planning and Land Use Management Act 16 of 2013. It provides the framework and system in which planners function within the country. The system is vested in governance structures and processes and needs to function accordingly.

1.2 Aims and objectives

The study is titled *A critical analysis of the development of the Spatial Planning and Land Use Management system in South Africa with special reference to international thinking and practice*.

A decade of SPLUMA: A review of the South African Spatial Planning and Land Use Management System.

Ten years after the implementation of SPLUMA: A critical review of the planning system.

The central aims of this study are to:

1. Establish and review the spatial planning and land use management system of South Africa.

The objectives of the research include:

1. Identifying and establishing the Spatial Planning and Land Use Management System in South Africa.

2. Discussing the most significant change in the Spatial Planning and Land Use Management System before and after the implementation of SPLUMA.
3. Discussing the domain of Urban and Regional Planning as the sphere and discipline in which the Spatial Planning and Land Use Management system functions.
4. Outlining and analysing the identified constituents of the Spatial Planning and Land Use Management System.
5. Determining the application of the Spatial Planning and Land Use Management system in South Africa and the systems that support it.
6. Proposing possible practical solutions to certain identified issues discovered in the current system.

1.3 Relevance of study

It is particularly important to examine this topic at this point in time in the light of the current reconsideration and upcoming 10-year review of the framework and implementation of the Spatial Planning and Land Use Management Act 16 of 2013 and its regulations by the Department of Agriculture, Land Reform and Rural Development (DALRRD) (DALRRD & SALGA, 2024), which highlights the importance of this study as pertinent and useful. This is the first review of SPLUMA since its promulgation in 2013 and implementation in 2015. The DALRRD indicated preliminary identified issues of the implementation of SPLUMA that will be addressed in this study by structurally and practically canvassing the reasons for the current issues by analysing the planning system. The identified issues of the implementation of SPLUMA by DALRRD and the South African Local Government Association (SALGA) were identified as:

1. Definitions
2. The provision of clarity on constitutional matters
3. Ensuring practical application of the sections, provisions and clauses
4. Improving involvement and participation of traditional and Khoi-San leaders in spatial planning and land use management aspects and aligning other related legislation
5. Implementation of SPLUMA in terms of capacity in local government and lack of urgency to prioritise spatial planning and land use management issues

6. The amalgamation of some municipalities and cooperation of traditional institutions and SPLUMA as well as other legal challenges

This study will structurally and thematically explain why these issues occur and address some of them through practical proposals as well as identify other issues that were not yet identified by DALRRD & SALGA. This study could support their efforts to understand the current issues and challenges within the SPLUM system.

Understanding the system in which a planner functions is crucial to address the needed issues of practitioners within the urban and regional planning landscape, specifically in South Africa, to adapt the system. Frequently, different kinds of planners or related disciplines function in silos and at times even ignore the reality of governance, administration and the vested place of decision-making, which results in frustration with the 'system', as it could be perceived as a dark horse. Simply put, a holistic view and understanding of the Spatial Planning and Land Use Management System and how its constituents 'fit' together is fundamental in the understanding of Urban and Regional Planning. Understanding what drives the system is essential in the functioning and implementation of Urban and Regional Planning as well as its interpretation. This study and content are relevant for pedagogical considerations as well as governance and professional development. Understanding the system and its nature will enable the government to address planning issues within South Africa. The SPLUMA-initiated planning system took many years to develop.

It took almost 20 years to evolve into this Act, and it will be useful to examine the outlined system and its boundaries, flexibility and shortcomings for practical, educational and institutional perspectives. It will furthermore be useful to understand in what way the planning system has changed from the fragmented system.

A pertinent issue within the system is the ongoing development of informal settlements and traditional areas that do not necessarily fit into the spatial planning and land use management system in South Africa; even under the first National spatial planning and land use management framework, the South African context and issues are not facilitated or addressed within the system. Even though some of the issues are mentioned, they are left open-ended with almost no room to facilitate informality, the integration of local

government and traditional areas and the issue of government-owned property related to occupation and land use facilitation.

The current socio-economic climate necessitates a closer examination of the spatial planning and land use management system to understand the implications for the South African context that include increasing and sprawling informality and land tenure issues.

The ongoing debates and controversies surrounding the accessibility of the spatial planning and land use management system underscore the urgency of conducting an in-depth investigation and consideration of the Spatial Planning and Land Use Management System of South Africa to clarify misconceptions and inform evidence-based policies in spatial planning and land use management in South Africa.

1.4 Problem statement

SPLUMA encompasses the overarching planning instrumentation that forms the framework for planning implementation. . SPLUMA, which was long awaited legislation and necessary, served as a transformer of the planning landscape in its entirety. The transition from the previous legislative planning framework towards the SPLUMA system from the 1st of July 2015, initially left many related parties and stakeholders in flux. The previous planning framework was structurally and administratively different. This given that there are other complications that take shape through the transition from one system to another. The structural change of the municipal areas and the change of planning administration that was administered by the provincial government and the local government, changed the authority entirely to the local government in terms of decision-making and administration related to planning.

The Spatial Planning and Land Use Management System is informed and structured by various components and interlinked systems. The various components include systems and levels of governance; land use administration; land tenure systems; other statutory frameworks; spatial ; the geographical context; the social context; the history and development of the internal variables related to land; the economic context ; and more (Laubscher et al., 2016; van Wyk, 2012).

The study includes a project that implemented the Spatial Planning and Land Use Management System for a Category B Local Municipality, stretching over a period of four

years. The subject municipal area includes the significance of understanding the structural change of administration and decision-making related to planning in terms of the previous structures of municipal areas and the current, including the traditional areas and the complexities that should be navigated and sufficiently adapted into the planning system, the implications of developing a wall-to-wall land use scheme that also deals with land use rights and impacted by land tenure, inclusion of all areas such as agricultural, conservational and border posts, that would have been previously administered by the provincial government. was used as triangulation device for the analysis of this study. The study addresses the basic questions of: “What is a Spatial Planning and Land Use Management System?”; “What are the main constructs in the spatial planning and land use management system and how do these constructs (Laubscher, et al., 2016; van Wyk, 2012) function individually and together?” Interpretations of the components of the Spatial Planning and Land Use Management System will be considered (Nel, 2016a; Nel, 2016b; Van Wyk & Oranje, 2014).

The study contributes to the explanation and advancement of the fundamental knowledge of the Spatial Planning and Land Use Management System in South Africa by the analytical examination and critical review of theoretical, practical, institutional and legislative explanations that are then interpreted through a current local project in consideration of the historical development of the planning system within the country. This should provide the necessary reflection on the implementation of SPLUMA a decade after it was implemented. The review of the implementation of the system, as proposed by SPLUMA, indicates certain issues and areas of concern and indicate where more consideration will be needed. Possible practical solutions will be discussed in Chapter 5.

The research gap was made in terms of the delay of implementation and consideration of the impact of transformative legislation in the planning environment. Structurally and administratively the change that was brought by the Constitution to require that all of the country should form part of a municipality, moved the change of municipal areas from being within an urban edge towards being wall-to-wall municipalities that included a few or several municipal areas in one wall-to-wall municipal area. This would later translate to planning administration that was solely authorised to municipalities, instead of the previous dual administration between the provincial government and the local government. The definite shift only came after the long-awaited implementation of

SPLUMA in 2015, although it was promulgated in 2013. There are scholars who will argue that the municipal administration of planning was nothing new in 2015, though that would be a vague generalisation as the Constitutional Court ruling of 2010 between the Gauteng Provincial Government and the City of Johannesburg, that ruled that the municipality is the authority for all land use planning as part of municipal planning only realised for the City of Johannesburg and Ethekewini Metropolitan Municipalities, also with a 24 month moratorium on the judgment (waiting for SPLUMA). The ruling only really effected most other municipalities after July 2015 with the implementation of SPLUMA with the physical registration and administration moving to the municipalities. During this time of waiting for legislation, after the structures of the municipalities have already been implemented, the structural capacity of the municipalities was not properly considered. This meaning, the previous administrative system had significantly more planners attending to planning matters, considering the municipal structures.

1.5 Research questions

The key issue this study addresses is the structure and implementation of the current planning system. Other research focuses on certain constituents of the planning system, for instance the land use scheme and criticism of it and how there is a need for a different approach. Some literature argues from a completely different angle and dismisses it completely, without providing structural discourse. Similarly, literature frequently focuses on components of planning, but it does not address the system itself. It cannot be said that the implementation of the current planning system is or was tested. A review of the system will explain certain structural issues within the system that was not considered, because of the individual approaches, seeing planning instruments rather than the system. It could be argued that this falls within the realm of planning law and perhaps it does, but the planning system is what planners practice and should be familiar with.

The research question and sub-questions that guide this study are:

- What does the South African Spatial Planning and Land Use Management system entail and how is it implemented?
- What establishes the spatial planning and land use management system and what does it look like?
- What are the key factors that influence the planning system?

- What planning instruments are used within the legislated planning system?
- What administrative and governance processes are involved within the planning system?
- What is the decision-making process within the planning system and in what is it vested?
- How has the planning system changed over time in relation to the previous system and the current system?
- How is the planning system implemented?
- How effective is the current planning system in addressing the planning requirements?
- What challenges are prevalent in the current planning system?

While previous research focused on areas in planning, this study will explore the structure and implementation of the planning system to address issues that occur with the implementation of the system as well as provide clarity on what the planning system is and what it is not.

1.6 Limitations of research

This study is limited to the current structure of the planning system, with comparisons made to the previous system. The key variables and focus of this system as per SPLUMA are the development principles, the land use scheme, the spatial development framework and the municipal planning tribunal (MPT). The planning discipline is broader than the legislated system, although all aspects of planning, representing the entirety of the discipline, are captured within the development of the variables within the system. This study focuses on the local government or municipal sphere of planning as it is the sphere of government, where planning is implemented. The other spheres of government forms part of the discussion. The primary research is vested within the legislative framework and the application of it within the local municipality. The application and implementation form part of a category B municipal context. The category B municipalities constitute most municipalities within South Africa. There are 205 local municipalities or Category B municipalities, 44 district municipalities and 8 metropolitan municipalities in South Africa (South Africa Yearbook, 2024). Category B municipalities cannot be generalised within a metropolitan municipal context, though the larger functioning will be similar, the

definitions and internal structures will be different. Category B municipalities provide exposure to other complexities. The study explains the interpretation of the planning system according to SPLUMA, while considering practical planning issues deriving from the previous system. The study is limited to one in-depth study for consideration of the implementation of SPLUMA, however Suri (2011) and Patton (2002) argue that one in-depth study that is information rich could reveal central issues of great importance to the purpose of the inquiry. The study focuses on the implementation of one Category B municipality in particular; however, most municipalities are Category B municipalities. Studying other municipalities in-depth could bring more insight, though the task could be insurmountable. The researcher is a professional planner and used the skills built up through experience to reflect on the study and implementation that was done by the researcher herself through four years of working on an implementation project.

The researcher assumes that planning is what it practices and draws on several years of practical experience, while knowing that there is significant discontent in general narratives that are opposed to planning practice. The researcher views planning as essential in the functioning and maintaining of quality of life for people - that is vested in government.

1.7 Key terms and definitions

1.7.1 Domain of Urban and Regional Planning / Town and Regional Planning

In the context of this thesis, the domain of urban and regional planning holds significant importance as it refers to the related practice of urban and regional planners that function within the Spatial Planning and Land Use Management System. The domain of planning is not limited to the current spatial planning and land use management system itself. SPLUMA itself refers to other types of planning. This was left open-ended, but it is automatically answered in the mind of a planner as related and inherent disciplines within planning that includes transport planning, urban design, road design, environmental planning (related to the Environmental Impact Assessment), green planning (sustainable planning) and more. The domain of planning is wider than the instituted planning system, which is recognised by the Planning Professions Act 36 of 2002 and the South African Council for Planners (SACPLAN). The guidelines for competencies and standards for

curricula development also provide a good overview of the domain that planners need to function in.

1.7.2 The Spatial Planning and Land Use Management System

The essence of the planning system is captured in the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA 2013:2), that imbues the planning system with certain components and certain planning instruments. The system essentially relates to spheres and structures in government and any related legislation that constitutes the planning system.

Planning tools that are indicated in the system

- a) Land Use Scheme
- b) Spatial Development Framework
- c) Municipal Planning Tribunal (MPT)
- d) Development principles

The study considers the structural changes of the system as currently embedded in local government. Before the wall-to-wall land use schemes and wall-to-wall municipalities, the system was vested in the provincial and local governments and worked differently. The structural changes were first instituted in the municipalities to become wall-to-wall municipalities that took approximately 15 years after that to start with the development of the wall-to-wall land use schemes. There were no proper interim measures for land use schemes that could address this discrepancy.

1.7.3 Local Government/ Municipalities

A municipality is the responsible institution that functions as local government that has to fulfil certain public responsibilities assigned by legislation. There are different kinds of municipalities. The Constitution of the RSA, 1996, in Chapters 5, 6 and 7 (RSA, 1996:41-68) prescribes the structures and roles of all three spheres of government. Municipalities as a local sphere of government are legislated in Chapter 7 of the Constitution (RSA, 1996:63-68) as:

- **Category A (Metropolitan):** A municipality with exclusive municipal executive and legislative authority within the municipal area. There are eight Metropolitan Municipalities in South Africa. They are Buffalo City (East London), City of Cape Town, Ekurhuleni Metropolitan Municipality (East Rand), City of eThekweni (Durban), City of Johannesburg, Mangaung Municipality (Bloemfontein), Nelson Mandela Bay Metropolitan Municipality (Gqeberha) and City of Tshwane (Pretoria) (Shale & Tibane, 2024:9).
-
- **Category B (Local):** A municipality that shares the executive and legislative authority in its area with a Category C (district) municipality. There are 228 municipalities in South Africa that are grouped into the 44 district municipalities (SALGA, 2017). According to the South African yearbook 2023/2024 (Shale & Tibane: 2024:9) there are 205 local municipalities.
-
- **Category C (District):** A municipality that has executive and legislative authority in an area that includes more than one municipality. There are 44 district municipalities in South Africa (SALGA, 2017).

South Africa has a total of 280 municipalities that are subject to change (adapted from SALGA, 2017). According to the South African Yearbook 2023/2024 (Shale & Thabane, 2024: 9), there are 257 municipalities that include Metropolitan (8), District (44) and local municipalities (205).

The Constitution of 1996 assigned thirty-eight functions to local government in its Schedule 4, Part B and Schedule 5, Part B, which include Municipal Planning and Building Regulations (Forbes, 2011:4). Other matters assigned to municipalities, that are also directly and indirectly related to planning, include, Municipal Airports, Municipal Health services, Municipal Public transport, Municipal Public works, Stormwater Management Systems in urban areas, Trading regulations, Water and Sanitation services limited to potable water supply systems and domestic waste-water and sewage disposal systems, Electricity and gas reticulation, Firefighting services, Local tourism, Air pollution, control of public nuisances, control of undertakings that sell liquor to the public, Municipal Abattoirs, Municipal Parks and Recreation, Municipal Roads, Noise pollution, Cemeteries, funeral parlours and crematoria, public places, refuse removal, refuse

dumps and solid waste disposal, street trading, street lighting, traffic and parking (RSA, 1996: 118). Municipal Planning is regarded as another key theme of this thesis, which legally vests Land Use Management decision-making within Municipalities.

Municipalities' legislative framework includes:

The White Paper on Local Government, 1998: The paper is a policy document that captures the background and history of local government. This was written during the time in which the transitional municipalities were created under the Local Government Transition Act 209 of 1993, that was repealed in 2008. The purpose of the consideration of municipal areas is inherently addressing spatial planning aspects as indicated in the paper (RSA, 1998). It envisions a Developmental Local Government, that involves the focus on establishing developmental outcomes that include the provision of household infrastructure and services, establishing liveable and integrated towns, cities and rural areas (RSA, 1998). Furthermore, it places municipalities within a Cooperative Government system, though local government is a sphere of government with its own roles and responsibilities, that includes authority in certain decision-making processes. Additionally, the paper discusses the municipal institutional system that directly mentions strategic land-use planning, integrated development. The paper also introduces the municipal administrative systems and its transition and amalgamation of previously separated municipalities.

Review of the White Paper on Local Government, 2025: The purpose is to review the White Paper on Local Government, 1998, and publish a revised Local Government White Paper during March 2026 to address underlying systematic and structural challenges (RSA, 2025:7). A key question that was asked in this publication was the question of whether the creation of a "wall-to-wall" municipal system was over optimistic.

The Local Government: Municipal Structures Act 117 of 1998: The Act establishes the operational framework for municipalities and defines the different categories of municipalities' functions and roles. It includes the establishment of municipalities, their by-laws, establishment of municipal councils, internal structures and functions, as well as powers of municipalities (RSA, 1998).

The Local Government: Municipal Structures Act 32 of 2000. This Act provides the principles, processes and mechanisms to enable municipalities to facilitate development progression of the country, to ensure essential services to the entire country, to define the legal nature of a municipality, to indicate the collaboration between the political and administrative vessels in the municipality, to establish an enabling framework for the core processes of planning, to promote a developmental government in its functioning, to enable service delivery agreements, encouraging public participation, promoting and establishing integrated development planning and more (RSA, 2000). This Act, in Chapter 5, from Clause 23 and specifically Clause 25 to 37, requires the adoption of an Integrated Development Plan (IDP) for municipalities, being the principal strategic planning instrument that should guide all planning and development (RSA, 2000:36-46). The Act is in relation with the enablement of the Constitution of 1996. This Act also requires the compulsory development of the Spatial Development Framework (SDF) for each municipality as a component of the IDP in Section 26(e) of the Act (2000:38). The SDF is further structured within SPLUMA as a key component of the SPLUMA and the planning tool for spatial planning in the Spatial Planning and Land Use Management System (RSA, 2013).

There are many more pieces of legislation that form the local government framework, for instance the Local Government Municipal Finance Management Act 56 of 2003 (MFMA), which will not be discussed as of primary interest in this study.

The reason for focusing on municipalities in this study is that the decision-making authority and processes for land use management are vested in local government. This inherently implies that the spatial planning as well as the municipality determines the criteria (as being in-line with SPLUMA) of what the decision-making entails within the given integrated legislative framework. As mentioned, there are 228 Category B municipalities in South Africa. The reflection on the implementation of the SPLUMA system on a Category B municipality relates to most municipalities.

1.7.4 Municipal Planning

Municipal Planning encompasses various functions (also directly related to Urban and Regional Planning), that are assigned to municipalities by legislation. This relates directly to land use management and the decision-making authority in this regard. The

Constitution of the Republic of South Africa (Section 156) assigns municipal planning to municipalities as a function, which provides the municipality with the authority to administer the aspects indicated in Section 155 of the Constitution (Forbes, 2011:4). Municipal Planning is mentioned as a function of local government matters in Part B, referring to section 155(6)(a) and (7) of the Constitution (1996:118). Section 155 of the Constitution refers to the listed matters in Schedules 4 and 5 of the Constitution that form part of the municipal functions (RSA, 1996:65). Municipal Planning is indicated in Schedule 4, Part B of the Constitution (1996:117) as a function of local government, amongst many other functions (RSA, 1996:118). Municipal Planning includes the establishment of townships and the zoning of land, which is used to regulate and control the use of land (Forbes, 2011:5). A municipality has executive and administrative power over the entire municipal area and national and provincial government have legislative power over municipal planning, as has been clarified in court rulings (Bronstein, 2015:643). Central to planning is the area that falls within the municipal area, which has changed significantly since the Constitution in that municipalities must be established across the entire area of the Republic of South Africa (1996:63). This leads to the demarcation of “wall-to-wall” municipalities, which are inclusive of all land areas (SALGA, 2017) within an urban area or town and outside of the town, including traditional authorities and agricultural land. It also includes a few or several towns in one municipal area, instead of a municipal area that is limited to one town within an urban edge. This is discussed in Chapter 3 of this thesis.

1.7.5 Municipal boundaries

Municipal boundaries were established by the Municipal Demarcation Board after 2000. The demarcation of municipal boundaries was introduced through the Constitution of the Republic of South Africa, 1996, the Municipal Demarcation Act 27 of 1998 and the Municipal Structures Act 117 of 1998. Section 155 (3)(b) of the Constitution requires National Legislation to establish the criteria and procedures for the determination of municipal boundaries by an independent authority. This gave way to the Local Government Municipal Demarcation Act 27 of 1998, which provides the criteria for demarcation, the factors that should be considered and the objectives needed to determine a municipal boundary. The Municipal Demarcation Board was established in 1999 to determine municipal boundaries. The Municipal Structures Act 118 of 1998 gives

structure to the provisions of the Constitution by creating three categories of municipalities through the demarcation process. The demarcation of municipal boundaries is determined for the existing system of local government that includes metropolitan municipalities, district municipalities and local municipalities.

The municipal boundaries are important for the consideration of this study as the significant structural change in municipalities, that is discussed in Chapter 3 of this thesis, has a significant impact on the spatial planning and land use management system. The introduction of wall-to-wall municipal boundaries are in line with the SPLUMA wall-to-wall Land Use Scheme. Both have expanded their areas significantly. Municipalities have changed from existing within an urban edge, governing together with the Provincial Government that managed land use management on agricultural land and any other land outside of the urban edge. The predecessor to the wall-to-wall land use scheme was typically termed the Town Planning Scheme, which was purposed for land use management within the urban edge and previously for a municipality. The structural changes brought about the use of multiple Town Planning Schemes in one wall-to-wall municipal area and no official scheme for the areas that were then demarcated within the municipal area (which includes agricultural land and traditional authorities).

1.7.6 Urban edge

The urban edge is a boundary around an urban area, typically also the boundary where municipal services are readily available. The urban edge would provide for the distinction between urban and rural areas (Govindjee, 2022:2; Horn, 2019:964). The urban edge was and is also known as a planning tool to prevent urban sprawl and promote more compact development for towns and cities (Horn, 2019:973). Before the re-demarcation of municipal boundaries, a typical municipal area would have been within an urban edge. The area just outside the urban edge would be the periphery of the municipal area. After the re-demarcation and re-establishment of municipalities in South Africa in 2000, the municipal area expanded across the urban edge and could include a few urban areas (with different urban edges) within one municipal area. The re-demarcated municipalities are known as wall-to-wall municipalities or municipal areas.

1.8 Study: The Spatial Planning and Land Use Management System of South Africa (not hypothesis)

This study considers and critically reviews the planning system as instituted and transformed by SPLUMA. This study uncovers how SPLUMA was implemented within the background and context of a Category B Municipality, that are the predominant municipalities in South Africa. Nkomazi Municipality was chosen as it is a Category B municipality, which forms the majority of municipalities in South Africa and includes valuable nuances to demonstrate the necessary transitions that the planning system had to endeavour and address. The municipality includes vast traditional areas with seven registered Traditional Authorities (plus one not registered), part of the Kruger National Park, other nature reserves, International borders, such as the Lebombo border post, an anticipated Special Economic Zone (SEZ), different old town planning schemes that relate to the previous framework of the planning system and municipal structures, several developed towns and transitional areas. The inclusion of the traditional areas and the established (within the planning system) towns within one land use scheme, spatial development framework and ultimately planning system, is significant in the understanding of the transformational work of SPLUMA and the structural changes that the Constitution brought to the planning system. Furthermore, the researcher was the owner of the company which implemented the SPLUMA system and could reflect on the system, processes and considerations in a practical manner.

1.9 Research design and methodology

General approach: The study analyses the South African Spatial Planning and Land Use Management system, interpreted through a current local project that implemented the system. The context was given by the reflection on the previous fragmented spatial planning and land use management systems, where the new system had to be implemented.

This study is a thematic investigation of the instruments and components of the current Spatial Planning and Land Use Management System in South Africa, considering the transformation of the system and the issues it caused and essentially what the system is. The thematic investigation or thematic analysis is based on a qualitative research method that identifies and analyses the meaning of the planning system. It is a systematic

grouping of data from relevant legislation and the practical implementation of the system to understand the planning system. It serves as a somewhat inductive approach in identifying the core focus areas of the planning system from legislation and implementation as directed by the local government as the custodians of implementing the planning system. The themes that are identified through the inductive process of the thematic investigation are iterative and require the reflection of the previous planning system to understand the given context of the planning system. The four-year SPLUMA implementation project plays a significant role in the research design in that it demonstrates the practicality of implementing the changes of the planning system. Through the reflection on the SPLUMA implementation project, the complexity of the system is practically demonstrated. This study uncovers the story of the planning system of South Africa, whilst identifying the key structures and patterns that are vested within the system through carefully considering what planning is, what the planning system entails, what the planning system is vested in, against the background of structural, institutional and administrative changes that created the context.

Qualitative research: Qualitative research is formed by approaches that are not structurally formalised, with a typical scope that is undefined and discovered (Mouton & Marais, 2012:156). Qualitative research methods depend on linguistic data and engage meaning-based forms of data analysis (Elliott & Timulak, 2005:147). The analysis of qualitative data has proved to be quite 'hands-on' within different disciplines (Flick, 2013:4). The definition of qualitative data analysis, as indicated by Flick (2013:5), relates it to the classification or organisation and the interpretation of language or visible substance to make report about implied and obvious dimensions and constructions of meaning-making (social or subjective) from the information that was characterised in it. Qualitative data analysis can furthermore be used to determine and designate concerns or structures in the field, constructions and processes and practices. The aims of qualitative data analysis can include aiming to describe the system, which may be a subjective exercise. Additionally, it could also aim at identifying the conditions of differentiation and looking for reasons for differences (Flick, 2013:5-6). According to Denzin and Lincoln (2011) (cited by Tomaszewski *et al.* 2020), qualitative research draws from interpretivist and constructivist paradigms that seek to deeply understand a research subject rather than predict outcomes, as in the positivist paradigm. Tomaszewski *et al.*

(2020) continue by stating that qualitative research values lived practices. Elliot and Timulak (2005:147) hold the view that qualitative research has important characteristic qualities that include the importance to understand a subject; open, exploratory research questions; unlimited, emergent description options; and the use of special strategies for enhancing the credibility of design and analysis.

Organisational analysis: The types of research that are interested in the formation of organisational development and the processes they contain are viewed as a method of organisational analysis as part of qualitative research (Rosenstiel, 2004:135). Organisations are complex entities that are coordinated within a framework of structures in a goal-directed and purposeful way, which typically suits interdisciplinary research (Rosenstiel, 2004:130).

Interpretive and descriptive approach: Interpretive description typically starts with what is already known, understood or recognized within a discipline related to the problem in question. This would structure the purpose of continuing interpretation as well as analysis (Thorne, 2014:109). Interpretive description is used in methodology to establish the different kinds of disciplinary foundations, origin and trend as they build knowledge together with the application and contextualised realisms of their practical contexts (Thorne, 2014:1). There is a significant difference between the more theoretical and more applied fields of the practice of a discipline (Thorne, 2014:99,102). The interpretive description approach encourages the researcher to stay open to further ways of observing and interpretation that could increase the capacity to understand a discipline or problem better than it was understood before (Thorne, 2014: 109).

According to Elliot and Timulak (2005:147-148), descriptive-interpretive qualitative research is described in different ways with sometimes minimal differences. Typical terms that are used include empirical phenomenology (Giorgi, 1975, Wertz, 1983), grounded theory (Henwood & Pigeon, 1992; Strauss & Corbin, 1998), interpretative phenomenological analysis (Smith, Jarman & Osborn, 1999), hermeneutic-interpretive research (Packer & Addison, 1989), consensual qualitative research (Hill, Thompson & Williams, 1997) (cited by Elliot & Timulak, 2005:147-148). The research questions within the qualitative data collection and analysis strategies are usually open-ended and exploratory in nature. The aim of exploratory questions is typically seen as:

Descriptive: What different structures does the subject appear as? What aspects does it have?

Interpretive: How is the subject formed? How did it unfold over time (Elliot & Timulak, 2005:149)?

Elliot and Timulak (2005:149) mention more typical types of research questions, though only the relevant types are discussed here.

Thematic investigation or thematic analysis: The thematic field analysis reconstructs complex topics in research. It addresses the question of what thematic fields this topic fits into (Rosenthal & Fisher-Rosenthal, 2004:263). It presents essential indicators in the practice of observation to understand the thematic field it functions in (Rosenthal & Fisher-Rosenthal, 2004:264).

The inductive approach: An interpretive description within an inductive analytic tradition seeks to organise insights that emerge iteratively with data in such a manner that the possibilities for understanding can be illuminated, considered and further developed (Thorne, 2014: 108-109).

An interpretive description makes use of creative structures in applied disciplines within the qualitative research practice. This is done in order to facilitate a coherent and strategic methodology that relates to the relevant discipline to produce knowledge that can be used (Thorne, 2014:111).

The statutory framework and institutional or governance framework for the planning system, in which the decision-making powers and processes are vested, forms the most essential part of the study. The development and building of this planning framework by way of the related legislation, will be discussed with the concomitant complications.

This will include the analysis of the change of geographical and physical changes in the governance structures and relational complexity that transformed planning from the pre-SPLUMA system to the current SPLUMA system. The historical development of the Spatial Planning and Land Use management system is inherent and crucial to the construct and interpretation of the system. The foundational differences between the

current system and the historical and previous system will be discussed as well as the implications thereof.

The literature has been sourced from credible academic journals, books and government documents. Interviews and enquiries with governmental institutions follow the required ethical, anonymous and voluntary approaches.

The planning system has been interpreted in an empirical study that is primarily related to the development and implementation of the Spatial Planning and Land Use Management System of a category B local municipality within South Africa. Additional questions and interviews were directed to certain representatives of government departments as well as academics to fill in gaps and/or to confirm facts.

The empirical research is done with low risk to the company which implemented the project. The project, as mentioned in the paragraph above, will be interpreted through the thematic investigation to address the study questions.

The following main research question and subsequent sub-questions were used to focus the research that analyses the implications of SPLUMA and subsequently the interpretation of the South African Spatial Planning and Land Use Management System:

- What is the construct of the South African Spatial Planning and Land Use Management system and how is it implemented?
- What determines the spatial planning and land use management system?
- What is the construct of the spatial planning and land use management system?
- What are the key factors that influence the planning system?
- What planning instruments are used within the legislated planning system?
- What administrative and governance processes are involved within the planning system?
- What is the decision-making process within the planning system and wherein is it vested?
- How has the planning system changed over time in relation to the previous system and the current system?
- How is the planning system implemented?

While previous research focused on areas in planning, this study will explore the structure and implementation of the planning system to address issues that occur with the implementation of the system as well as provide clarity as to what the planning system is.

The study will contribute to an understanding of the current issues within the transformed spatial planning and land use management system and provide practical suggestions.

The discipline that the student is vested in is Urban and Regional Planning. This study focuses on the framework set for spatial planning and land use management as intended by SPLUMA for the planning system in South Africa.

1.9.1 In the context of current research philosophy and analysis

Johann Mouton describes and identifies in his book *Basic concepts in methodology of the social sciences* (first published in 1988), different dimensions to social sciences that construct a narrative of research. He names the different dimensions as the sociological dimension, the ontological dimension, the teleological dimension, the epistemological dimension and the methodological dimension (Mouton, 1996:7-8). The five aspects of social science research that are identified, are part of the construct of the same process, viewed from different angles or dimensions as research can be discussed from several perspectives (Mouton, 1996: 8). The study recognises the different perspectives within these dimensions and constructs as per Chapter 2 of this study as well as below in this chapter.

The five dimensions of social sciences research (adapted from Mouton, 1996)

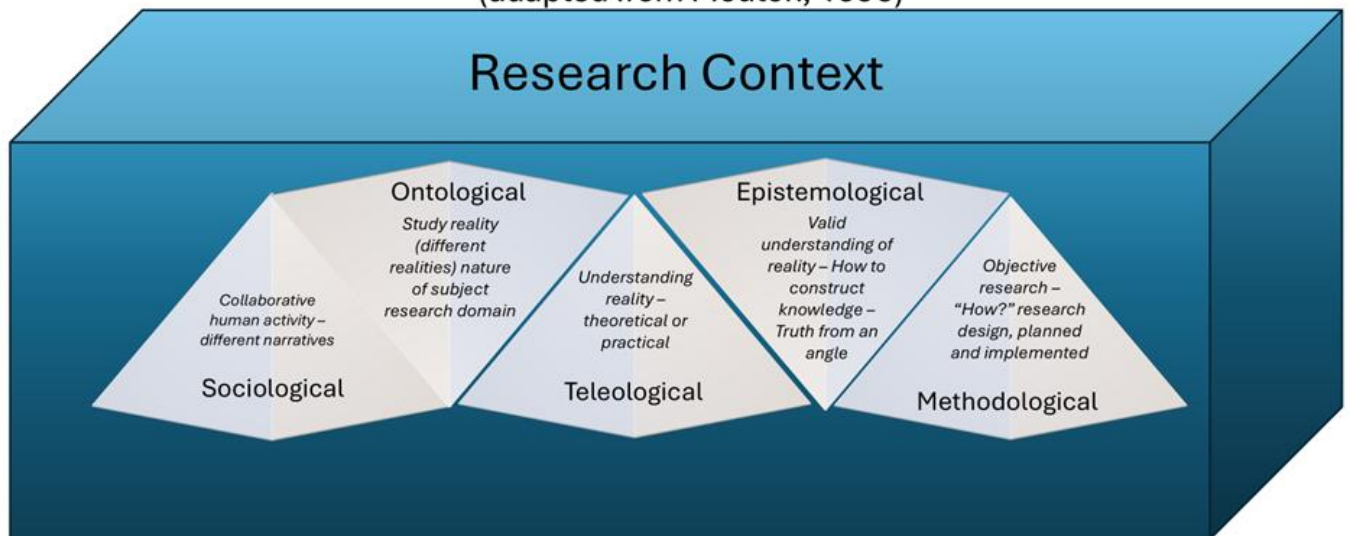


Figure 2: The five dimensions of social sciences in research context

Source: Adapted from the text of Mouton, 1996.

The subject project for research and the related discipline contexts of research follow certain traditions or paradigms at times (Mouton, 1996:17). The different perspectives or narratives in the planning discipline is discussed in section 2.4.2 of this study, and an interpretation of the domain of planning in the context of the project is discussed in section 2.2 of this study in establishing the domain of planning in the South African context for this study. Mouton (1996:17) captures it well in stating that researchers are the disciplinary context, paradigmatic context and the research project forms layers of the five dimensions of social science, as illustrated below.

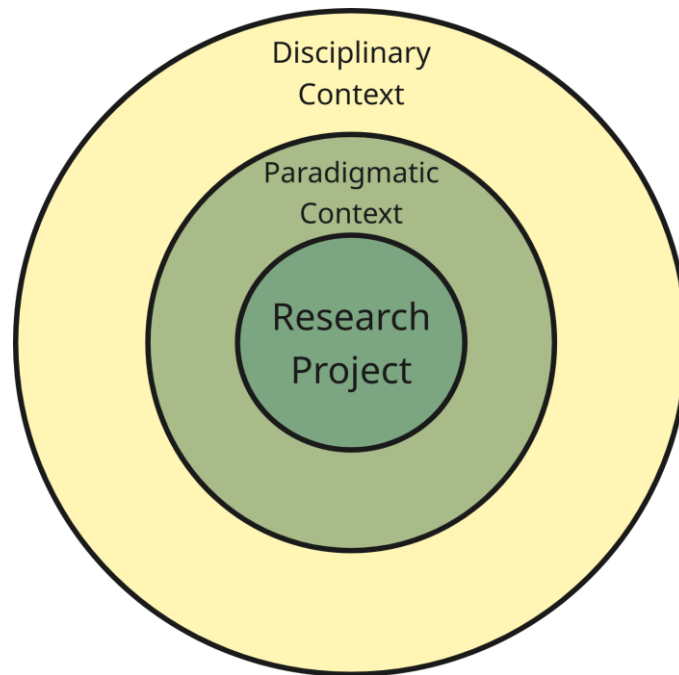


Figure 3: The disciplinary and project contexts of research

Source: Mouton, 1996:17

The five different dimensions of research and the implication of the disciplinary context and the paradigmatic context in the research project are discussed in the subsequent section.

Sociological dimension

The sociological dimension relates to scientific research as a joint or collaborative activity, which involves the typical or most popular literature of a discipline or topic engaging with other researchers and related topics and comments. A discipline typically forms part of a research community or scientific community in which certain problems are identified by the related academic or research community. Ideology plays a significant role in the process of research and the views that are held or used as a central point of argument or what takes preference for a certain research community (Mouton, 1996:10). Mitroff and Kilmann suggest that the ideological preference of a researcher impacts their interest and motivation, the cognitive construction of the research and their thinking approaches (Mouton, 1996:11). This also influences methodological considerations (Mouton,

1996:11). This study does not follow the most popular narrative by the planning research community. This study is essential and needs the reflection and involvement of planners to constructively address appropriate issues. Though following a popular narrative could anticipate the development, which in my view there already is, a vacuum for planning issues that cannot be addressed as the focus seems more likely to argue what planning should be and how negative it is, instead of addressing real practical issues that need the deliberation of planners. Notwithstanding that it is important to reflect on what planning should be and its shortcomings, it just should not be the focus when it comes to research in planning.

The sociological dimension of planning entails the prevailing research communities and networks and the matters of ideologies as influence (Mouton, 1996:18). This is also discussed in the planning theory section related to the different narratives in planning in Section 2.4 of this thesis.

The project level context from the sociological dimension relates to decision-making (Mouton, 1996:18). The context of the subject study research was conducted on an institutionally resourced project that relates to the implementation of the Spatial Planning and Land Use Management System, as described in SPLUMA. The project is a practical reflection on the implementation of the planning system and what constitutes a planning system in the eyes of the government and rightfully the holders of planning decision making processes. This is discussed more in Chapter 2 of this dissertation.

Ontological dimension: The ontological dimension relates to the reality of the research, which could be many different realities (Mouton, 1996:11). This reality is related to the research domain that has reference and the different perspectives that could be formed around the subject aspects of the research and context. It pertains to the diverse perspectives on the **nature** of the subject **research domain** (Mouton, 1996:11-12). Researchers would have explicit beliefs about the subject reality, which would influence the description and definition of the research problems. The identification of these beliefs is regarded as domain assumptions that relate to the nature, construction and positioning of subject aspects (Mouton, 1996:12). The domain of planning is addressed in the study and deliberates on its construct. The study field of urban and regional planning is a complex and encompassing field of study (problems, phenomena, processes, events and

sub-disciplines). Within the discipline there are different and competing ways (paradigms) of understanding the urban and regional planning reality or aspects thereof. There are different domain assumptions, life and world views. Within the discipline, many schools of thought exist, and they understand the same problem differently. This study theme and topic of the Spatial Planning and Land Use Management System of South Africa, which specifically depicts the change to the SPLUMA system, relate more to the statutory and governance structures that constitute the system. This is not politically motivated research that would argue what planning should be and what it is not. It is a reflection on the South African planning system itself and the aspects thereof.

There are various ways in which the planning discipline can be defined according to different narratives, though the governing body of planning in South Africa, the South African Council for Planners (SACPLAN), provides some definition and clarification of what the domain of planning is (SACPLAN, 2014:6-7), which is discussed in Chapter 2, Section 2.2 of this thesis.

The study is a qualitative study that makes use of constructs that are provided by legislation and planning practice. Planning is viewed from a local institutional planning practice perspective and guided by the legislation that frames it, as well as all related factors and considerations that are interconnected with each planning process.

Teleological dimension: The teleological dimension refers to the character of the practice of science that is goal orientated that consist of inherent aims (Mouton,1996:13). Knowledge is the main aim of research. It forms and reforms reality, whether it is theoretical knowledge or practical knowledge (Mouton, 1996:13). The Greek word for aim or goal is *telos*, that directly implies that research is goal-oriented, and this is supported by what was chosen as important in the study and any distinctions made in the research (Mouton, 1996:13). This is directly related to the research goal of a study (Mouton, 1996:14). The different goals that were decided on have methodological implications (Mouton, 1996:14). This also relates to the categorisation of research goals, which could be descriptive, explanatory, predictive or exploratory (Mouton, 1996:14). The teleological dimension relates to research being goal-driven, being theoretical and/or practical (Mouton, 1996:19). The theoretical goals within the study project perspective are explanatory, descriptive and exploratory (Mouton, 1996:19) in the evaluation of the

implementation of the South African Spatial Planning System through the implementation project of SPLUMA within a local government context. The practical objective of the research is to identify issues, reflecting and monitoring of the planning system to provide information (Mouton, 1996:19).

This study is descriptive and explanatory of the changes that have taken place in the South African Spatial Planning and Land Use Management System through the key aspects as it was presented and interpreted, not specifically by the researcher, but through the government, in which the planning function is vested.

Epistemological dimension: The epistemological dimension relates to the constructs of knowledge used to uncover truth. The quest for truth with complete certainty is admittedly unattainable (Mouton, 1996:14).

The history of epistemology involves a different explanation of the nature of epistemology (Mouton, 1996:19). In Greek philosophy it requires proof that can be demonstrated, such as the fact that Plato, Aristotle and Francis Bacon upheld the view that knowledge must be demonstrated; Rene Descartes considered knowledge to be indisputable; the Positivists maintained that knowledge had to be certain and persistent; Karl Popper argued that knowledge could be confirmed in order to validate it to identify falsification and Kuhn related to problem-solving (Mouton, 1996: 15,19). It can be concluded that the truth is versatile, and scientific statements are directed to truth from an angle (Mouton, 1996:15). Further, it could be said that absolute truth is not obtainable in knowledge, though knowledge relates to being valid, being able to demonstrate, be reliable and the quality of research findings (Mouton, 1996:19).

In this study Epistemology has an impact on the interpretation of what the Spatial Planning and Land Use Management system is and what it is constructed of, as well as what determines the system in South Africa. This is discussed within Chapter 2 of this thesis that relates to the domain of planning. Chapter 3 of this study relates to the framework in which planning functions and determines the Spatial Planning and Land Use Management System in South Africa. The study reflects on the legal and institutional aspects that create the planning system, as well as the practical implementation in finer detail that has an impact on the said system.

Methodological dimension

The methodological dimension relates to the “How?” of research that frames how the research should be designed, planned and implemented to comply with the related scientific criteria (Mouton, 1996:15). Another way of describing the methodological dimension is that it is the reasoning of applying scientific methods in the study of truth or reality (Mouton, 1996:15). The methodology requires various decision-making processes that include the determination of the related theory, the research hypothesis, what aspects or measuring instruments should be focused on, what data collection methods would work best in the context, how could the information be analysed, what do the findings mean and how do they relate to the original formulation of the identified problem (Mouton, 1996:15-16)? This is the logic of the process of decision-making within the scientific research (Mouton, 1996:16).

The decision-making process within research is complex and the field of the research methodology is defined as a study of the research process: it relates to the different techniques that are used, the basic rationale in the use of these approaches, the limitations of these techniques, the role of any assumptions and presuppositions in choosing methods, the influence of methodological preferences on the types of data analyses used and the interpretations of findings and more (Mouton, 1996:16). The weight of the decision-making of the researcher on making correct decisions in maximising the validity of the research, relies on the critical practice of the researchers thinking to choose the most valid course (Mouton, 1996:16). The goal of social science study is to be objective and Mouton (1996:16) concludes that objectivity is dependent on the type of research design is used (Mouton, 1996:16).

Though the title of this study indicates a critical review of the planning system in South Africa, it does not relate to Critical Theory itself that is related to neo-Marxism (Mouton, 1996:19). The word *critical* in the study title is plainly intended to mean a thoughtful review of the planning system, distinguishing its aspects and identifying certain issues, which relates to the literal meaning of the word. The orientation of the epistemological construct through the planning discipline would rather relate to critical rationalism and a systems view of planning, which in the view of the researcher provides space for all other perspectives or narratives within planning as aspects of planning that are included and

considered in the construct of the planning world itself. The study follows a qualitative methodological approach, although the project itself involved qualitative, quantitative and participatory action approaches combined (Mouton, 1996:20) as it was required by legislation and more. The data collection of the project of this study relied on interviews, meetings, practical implementation, policies, legislation and documents. The data analysis of the study itself relied on the interpretation of the implementation of the spatial planning and land use management system of South Africa, the history of it and how it transpired into the current system.

How does Mouton (1996:16) suggest that a scientific research project should be planned and executed to ensure that the findings would be most valid? He motivates this in terms of the view that it should be objective in a way in which context plays a central role. The five dimensions of social sciences research that form a context as mentioned above, are informed by the context (Mouton, 1996:16).

Table 1: The contextualisation of the study within Mouton's (1996) decision making process

Mouton (1996:16): Methodological decision-making process to obtain scientific objectivity	The SPLUM system (study)
Various techniques and methods used to address the broadness and complexity of the research process to develop critical orientation	Reflection on a physical disciplinary project within the reality that planning functions in.
Underlying rationale that is used in methods portrays fundamental assumptions and patterns in narratives	Within the discipline the planning system is defined and prescribed by legislation and institutionalized decision-making. The most popular planning paradigms or narratives in theory do not largely correlate with the planning system in the planning discipline. The reflection of the implementation of the planning system according to SPLUMA, should provide

	insight into the complications and finer details of the planning system. All Category B municipalities had to implement a SPLUMA aligned system within five years after it was implemented on the 1st of July 2015. This reflection of the project and comparison with the previous system should identify certain areas of concern or identified issues. The reflection on the same could identify possible remedies or suggestions. This should then also indicate what the planning system is and how it relates to the world it functions in.
Influence of methodological preferences that supports the answer to the research question, maintaining a scientific research character	This research study itself is qualitative. The study includes a reflection of a project that implemented SPLUMA. They physical implementation of SPLUMA included research in itself and used mixed-methods to complete. It included qualitative, quantitative and participation methods to complete the implementation of the spatial planning and land use management system. The author of this thesis attended to the implementation of the indicated project and has therefore first hand knowledge of it in order to complement and complete a qualitative study that answers to the research question of this thesis.

Role of methodological preference on types of data analyses	Preference given to a systems analytical process and the origin and establishment of the planning system. Though it might seem rigid, it is more interpretive than positivist. The reflection of the implementation of the planning system according to SPLUMA, the comparison of the planning system as changed and the reflection on the implementation of a system.
Limitation of techniques	The study is triangulated through a project that serves as a case study for the implementation of SPLUMA
Role of assumptions on choosing methods	Chapter 1
Interpretation of findings	Chapter 3, 4 and 5

1.9.2 Data collection and data analysis: Purposeful sampling

Qualitative data collection relates to open-ended research questions and uses an open-ended approach to obtain the data (Elliot & Timulak, 2005:149-150). This in turn also implies that the researcher includes her own explanation of their experience and observations is not constrained to pre-existing classifications. The investigation is typically adaptable and adjusted to the identified problem, in which researchers' particular experience adds value. The data for the four-year project for a Category B municipality in Mpumalanga was kept by the researcher as the owner of the company that performed the project. The functional and legal documents and systems produced in the study are public and accessible. The building of the data bank of information for the project was stored on personal external hard-drives and hard-copy documents, together with personal notebooks. The researcher attended to each and every detail of the project and therefore have observational knowledge of the implementation and performance of the system.

Observational methods used in qualitative research include notes that are descriptive and observational. This also includes the researcher's interpretations. Key aspects that are typical of the data collection in descriptive/interpretive qualitative research include that it generally has a particular focus that is driven by the research question. Furthermore, it frequently includes a triangulation strategy with data collected that can serve as cross-validation (Elliot & Timulak, 2005:149-150). The four-year implementation project of the SPLUMA system for the Category B municipality serves as the triangulation of the planning system in terms of theory and legislative framework. This enabled significant insight into the transformation of the municipal structures, planning administration and land use planning and management, together with spatial implications.

The study includes an open-ended research question that fundamentally enquires what the spatial planning and land use management system is and how is it implemented. Essentially, this question also addresses the nature of planning. The data was drawn from a four-year project that the researcher managed and implemented. This serves as the reflection on the implementation of the Spatial Planning and Land Use Management System for a Category B municipality in South Africa, which is the predominant category of municipalities in South Africa. The data for this project was sourced by the researcher herself and involved data collection for the development of a land use scheme, a spatial development framework, the establishment of a Municipal Planning Tribunal (MPT) and the implementation of an electronic planning system that enables land use management. The researcher thus had firsthand experience of the collection of all the data for this project as well as the relevant frameworks it functions in and had functioned in. The researcher also draws from the experience of fellow planners within government entities, professional planners, community members and her own experience as a town and regional planner. The collection of data for the establishment of the framework that planning functions in, was drawn from professional experience, library searches, countless discussions with professional planners, government employee engagements, own practice and observing other planners and their work, fuelled by a deep curiosity how this system works, as well as the establishment of the domain of planning. The researcher's experience in planning fundamentally contributed to the data used for this study, including notes and memoranda while planning practice and library searched readings. Observation of planning practice, as well as the observation of previous and

current narratives in the planning field, served as useful information gathering and note-taking experiences that contributed to the use of data. The particular focus of the study was the reflection of the implementation of SPLUMA in a category B municipality in South Africa. The data used to establish the framework for planning in South Africa and establishing the domain of planning, together with the narratives presented in planning was triangulated with the project that implemented the Spatial Planning and Land Use Management System in a category B municipality to serve as a cross-validation of the literature in the practical implementation of the system.

Sampling

This study made use of purposive sampling. Creswell (2013:100,102) indicates that purposive sampling can be used to select cases that can typically demonstrate the problem, process or specific purpose of the study that can be rationalised by the researcher. Essentially, the researcher determines the study project that can purposefully inform the understanding of the problem (Creswell, 2013: 156). The researcher made use of purposive sampling in selecting the implemented project that spanned over four years, that directly relates to the given problem. Furthermore, the sample project forms part of the greatest number of municipalities in South Africa, and that allows the use of valuable considerations for the stated problem.

Suri (2011:63,64) provides arguments for purposeful sampling for research synthesis in qualitative research, which is essentially interpretive. Suri (2011:65) asks the question of how different purposive sampling strategies could be revised to expand opportunities within research synthesis. This in the background of Patton, that is popularly cited as an authority in the writing of purposeful sampling (Suri, 2011:63). Patton holds up 16 purposeful sampling strategies to enhance the process of qualitative research synthesis (Suri, 2011:63). Suri (2011:65) quoted Patton (1990, 2002) who argues that purposive sampling is credible and produces significant learning, when information-rich cases for study are used and studied in depth, leading to insights and in-depth understanding, rather than empirical generalisations (Patton, 2002:230 in Suri, 2011:65). Different research synthesis for a similar subject study could be performed for different purposes that would entail different sampling strategies that are affiliated with the related synthesis purpose. This should also outline the given gaps or influence on the synthesis findings

(Suri, 2011:65). A central issue in synthesis could commonly be reverted as to how to amplify the worth of the synthesis within the accessible resources, rather than adhering to the maximum rigorous synthesis (Suri, 2011: 66).

Suri (2011:66) states that it is essential to access key information in the field of the study to help identify information-rich cases. It is further stated that researchers working in the field can assist in identifying a useful research focus and can identify useful reports that are valuable among practitioners in the substantive domain. This study uses a case study that was developed over a period of four years that demonstrates the indicated problem directly and provides essential information that is reflected in Chapters 3 and 4 of this study.

Research synthesis is intended to build new knowledge by making connections and creating tensions between individual study reports (Suri, 2011:64). Suri (2011:64) indicates examples of interpretive methods of research synthesis that are termed by different authors as qualitative systematic reviews (Booth, 2001), meta-analysis of qualitative research (Jensen & Allen, 1994), meta-study (Paterson, Thorne, Canam & Jillings, 2001), qualitative meta-synthesis (Sandelowski, Docherty & Emden, 1997) and qualitative research synthesis (Major & Savin-Baden, 2010). The term '*qualitative research synthesis*' is used here as a universal term for all qualitative methods of synthesising research that is typically informed by critical, interpretive and postmodern sensibilities (Suri, 2011:64). The researcher interpreted the data from the background of being a qualified professional planner who had experienced the system and identified the problem in practice, simultaneously studying the established frameworks and narratives therein.

1.9.3 Ethical considerations

The researcher was the owner of the company that implemented the subject case study (discussed in Chapter 4). The researcher was involved with each detail of the project presentation, formulation development of the land use scheme, review of the spatial development framework, the implementation of the municipal planning tribunal and the development of the electronic network for the land use management system, and all included the inherent and contextual detail necessary to implement the system as SPLUMA projects it. The information was held by the company itself. Other research

that included the establishment of the South African Spatial Planning and Land Use Management framework was done by reflection on the project, numerous discussions with government employees and planning professionals, as well as library searches. The researcher supports municipal planning in understanding the complexities and systematic challenges and that it involves and therefore is purposed to structurally identify issues without compromising the privacy of the given municipality and its employees, nor any other government department. The information used will not compromise the privacy of any institution or individual and is safely stored on a personal hard drive. The related documents themselves are public.

1.9.4 Case study justification

Nkomazi Municipality was chosen as it is a Category B municipality, which forms the majority of municipalities in South Africa and includes valuable nuances to demonstrate the necessary transitions that the planning system had to endeavour and address. The municipality includes vast traditional areas with seven registered Traditional Authorities (plus one not registered), part of the Kruger National Park, other nature reserves, International borders, such as the Lebombo border post, an anticipated Special Economic Zone (SEZ), different old town planning schemes that relate to the previous framework of the planning system and municipal structures, several developed towns and transitional areas. The inclusion of the traditional areas and the established (within the planning system) towns within one land use scheme, spatial development framework and ultimately planning system, is significant in the understanding of the transformational work of SPLUMA and the structural changes that the Constitution brought to the planning system. Furthermore, the researcher was the owner of the company which implemented the SPLUMA system and could reflect on the system, processes and considerations in a practical manner. Suri (2011:65) quoted Patton (1990, 2002) arguing that purposive sampling produces significant learning and is credible, when information-rich cases for study are used and studied in depth, leading to insights and in-depth understanding, rather than empirical generalisations (Patton, 2002:230 in Suri, 2011:65). The researcher has personal in-depth knowledge and understanding of the implementation of the SPLUMA system in the Category B municipality. The researcher had to study the planning system from different angles, perspectives, considerations and contexts. This within the legal parameters of the system and its impact.

1.9.5 Limitations

The study reviews the implementation of the SPLUMA system in a Category B municipal area and does not include the analysis of a Category A or C municipality. Therefore, no metropolitan or district municipality forms part of this study.

1.10 Structure of thesis

To present a coherent and logical argument, the dissertation is organised into the following main Chapters:

Chapter 1 introduces the aims and objectives of the study, as well as the problem statement, research questions, the key terms and definitions that scaffold the study, discusses the outline the research methodology employed, detailing the chosen approach, data collection methods, and data analysis techniques for a rigorous exploration of the planning system.

Chapter 2 builds on the introductory groundwork in a discussion of the development of narratives within the planning field, which are at times regarded as planning theory. It uncovers the different formations of thinking in planning expressed within a development over time and context.

Chapter 3 uncovers and analyses the statutory and governance framework of the spatial planning and land use planning system in South Africa, which forms a core part of the research.

Chapter 4 reviews the practical implementation of the SPLUM system, offering a comprehensive discussion and interpretation of the application.

Chapter 5 critically examines the findings considering the research objectives and explores their implications within the broader context of the spatial planning and land use management/planning system. It addresses limitations and ensures a balanced approach and deals with the challenges encountered during the research process, suggesting potential areas for future investigation in the spatial planning and land use management system. It also presents the concluding remarks, summarising the key findings and contributions of the study.

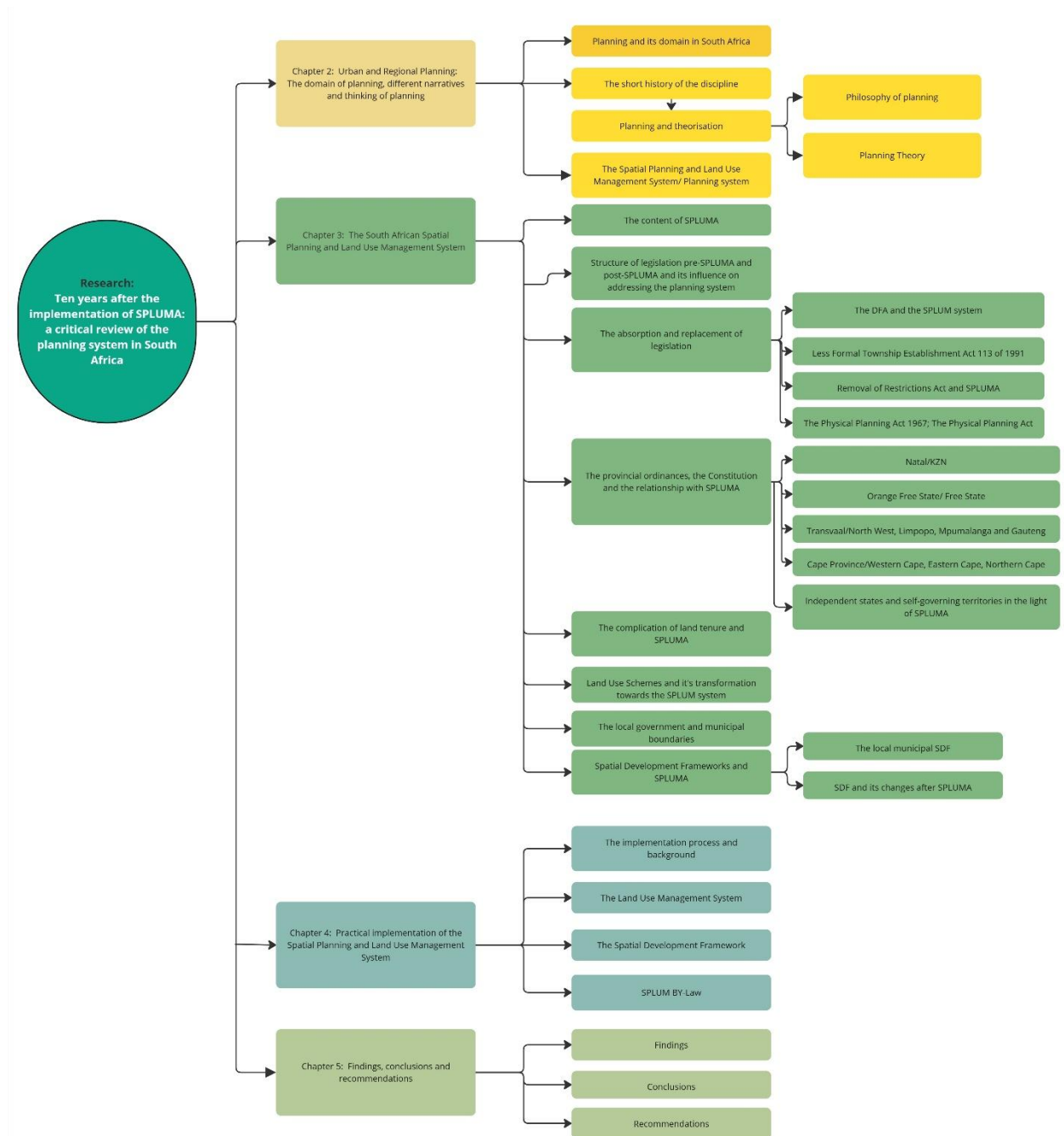


Figure 4: Chapter layout

CHAPTER 2 URBAN AND REGIONAL PLANNING: THE DOMAIN OF PLANNING, DIFFERENT NARRATIVES AND THINKING OF PLANNING

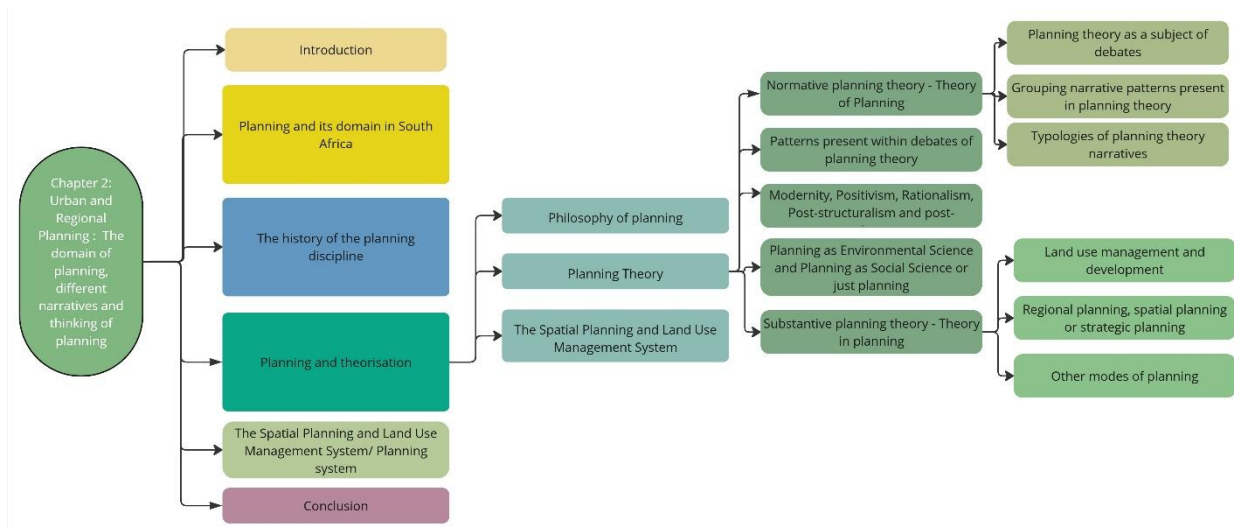


Figure 5: Chapter 2 layout

2.1 Introduction

The question that planners are frequently confronted with is “What is planning?” (Friedmann, 2008). This is a difficult question to answer, and it is asked often by planners themselves because of the strong relationship of urban and regional planning with the situational context of a planning problem. Every context requires a different approach or at least a different consideration and a planner should be equipped to manage and guide each one of these processes and problems. This entails determining what planning implements are needed, what will be the best course of action, while considering the socio-economic, environmental, statutory, governmental, geo-technical, access, engineering influences in the related context. This also includes the consideration of the related framework(s) of prescribed processes to address the contextual situation. Just to mention that the indicators here are not complete, but an indication of the kind of considerations that a planner will consider in any problem or application. These considerations are what Professor Andreas Faludi (2009) would call strategic choice as per John Friend and Neil Jessop (1969) in exploring uncertainty and complexity in the decisions planners are faced with in their book: “*Local government and strategic choice: an operational research approach to the processes of public planning*”. The ‘decisions’ planners are faced with translate in this study as the context that planners work in and

the informed decisions planners must make to include certain aspects within the context of the planning application or problem. Faludi (2009, 1974) developed this as the “decision centred view of planning.” This said, it does not mean the decision-making power of the outcome of the application, which in South Africa is vested within the Local Municipality. It is the decisions planners must make within the process of planning applications or problems. Planning is an applied science. The one commonality in any planning context is that it involves land. A core component of planning is the context as indicated by Faludi, but the power of decision-making is vested in the relevant authority to approve or not to approve an application. Planning decisions related to planning applications in South Africa are not determined by developers, the community, academics or professional planners. Decisions are left to the local municipality with influence from other government departments, depending on the context. Planners, developers and the community can only apply for what they would like to develop, but the powerful decisions are vested in the local municipality, which has the right to declare an application as “not approved”.¹ They can also “approve” applications, usually with conditions. These conditions are determined by the municipality. This is established within the legislative framework for spatial planning and land use management, which establishes the local government or municipality as the decision-making body (within the Municipal Planning Tribunal and related structure) of all land use planning and development applications. This will be discussed in Chapters 4 and 5 of this study that also address its implementation. The legislative spatial planning and land use management framework is set out in the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA), which clearly indicates the planning instruments used within the field of Urban and Regional Planning and the planning system itself. It also indicates the content of the mechanism that constitutes the planning system. The field of urban and regional planning

¹ A good example is the application for a smart city within the City of Johannesburg (Businesstech,2019). A company that is vested in China, bought much of the land within the Modderfontein area. This company had political connections with the executives in National Government. It seems as if they were confident that they would succeed in establishing a smart city within this area -confident enough to buy vast areas of prime land. A road was also built with an open end towards the Modderfontein Reserve, planning to run through it. However, when it came to the actual planning application submission to the local municipality (the metropolitan municipality), the City of Johannesburg was steadfast in their decision not to approve it. They contended that the proposed development did not fall within their vision for the municipality. It was not aligned to their Spatial Development Framework. The company sold of all the land they had purchased to a different development company after the failed attempt to implement their smart city. The decision-making power lies with the local municipality.

is wider and better portrayed by the South African Council of Planners (SACPLAN), the governing body that regulates the planning profession, as instituted/established by the Planning Profession Act 36 of 2002 and further defined in their “Guidelines for Competencies and Standards for Curricula Development” (SACPLAN, 2014).

This chapter envelops and establishes the different levels of theorisation of planning. It indicates the appropriate definition of planning in South Africa and reviews the developmental history of the planning discipline. Further, it reviews and constructs the different narratives within planning that formed over time as a form of philosophical and normative theorisation. It is also necessary to distinguish substantive theorisation and the planning tools used for implementation. A short description of the South African Spatial Planning and Land Use Management will be provided, which will be elaborated on in Chapter 4.

2.2 Planning and its domain in South Africa

South African Urban and Regional Planning, as a profession, was established within the British planning system (see section 2.3). The South African planning discipline has developed into a system of its own, which is aligned with the governance structures (see Chapter 3). The planning definition as per SACPLAN, the institutional body governing planning in South Africa, developed their definition of planning within the country’s context as indicated here below:

“The core of urban and regional planning is a concern with people and how they use space:

- *Where and under what conditions people live*
- *How people make their livelihoods*
- *How people move between their homes and other destinations*
- *How and under what conditions land used.*

These concerns are manifested as spatial systems and networks.

Planning is strategic, rather than a comprehensive activity, which implies selectivity and a focus on what really makes a difference to the fortunes of an area over time. Planning is a field of expertise which involves initiating and managing change in the built and natural environment, across a spectrum of contexts, ranging from urban to rural; and delineated at different geographic scales (national, regional, sub-regional, city, town, village, neighbourhood), in order to further human development and environmental sustainability.

Planning operates specifically in the fields of:

- *Delimiting, regulating and managing land uses.*
- *Organisation of service infrastructure, utilities, facilities and housing for sustainable human settlements through synthesis and integration of information, for preparation of strategic, policy, statutory and other development plans.*

The term ‘planning’ also implies a mode of governance driven by policies through a deliberative process and judgement of collective action in relation to these policies. Planning is not, therefore, a neutral technical exercise: it is shaped by values which must be made explicit. Planning itself is fundamentally concerned with making ethical judgements.”

Figure 6: SACPLAN's definition of planning in the South African context

Source: SACPLAN, 2014:6-7

The definition includes spatial planning and its implications as the core of urban and regional planning and then mentions land use planning and some of its constituents. The spatial planning implications are considered in land use planning, but spatial planning and land use planning are distinctly different. Planners need to master both. Spatial planning's instruments relate mostly to future planning and the planning instruments for land use relate mostly with current development and management. Land use planning considers future development, but it is not future development. Both are equally core functions of planning. There are more considerations at play as well. In the development of the spatial planning frameworks and system and the development of the land use planning framework and system entails a different approach than that of implementing spatial planning and land use planning, which are concerned with development and management applications (an administrative function). This implies governance, which is mentioned, but not implicitly linked in this definition to the administrative and governance structures that form it. Similarly with the development of planning legislation, in which planners are not as involved as they should be, requires a different perspective. The core issue stays the same – the issue of land, its practices and context in preserving and enhancing the quality of life for people and communities.²

Another possible addition to the definition of planning could be the management and/or development of a specific area or parcel of land, considering the social, social-economic, economic, environmental, spatial, access, transportation infrastructure, infrastructure and possible resources, before any development takes place. It is the legal and institutional preparation of a proposed development and/or land use management before any physical development is done. It includes the study of feasibility for possible development and land use management. The inherent principles are captured in a legislative framework, within which planning functions. The capability and ability of a planner in practice require certain competencies (SACPLAN, 2014:12-41).

² Context in this dissertation generally refers to all influences on the specific land, which includes the owner

SACPLAN developed a list of categories to indicate the principles and competencies that a planner should have to enable the professional integrity of the planning profession. The legal profession has a similar framework to follow. It is therefore also imperative that planners be developed into qualifying as professional planners as upholders of the professional integrity of the discipline (RSA, 2002: 22,24).

Table 2: SACPLAN competencies and principles that personifies the planning profession and discipline.

SACPLAN principles	Implications for planning competencies	Generic competencies	Core competencies	Functional Competencies
		Critical thinking	Settlement history and theory	Survey and analysis
		Interpersonal competencies	Planning theory	Strategic assessment
		Communications	Planning sustainable cities and regions	Local area planning
		Leadership	Urban planning and place making	Layout planning
		Professionalism and ethical behaviour	Regional development and planning	Plan-making
		Social responsibility	Public policy, institutional and legal frameworks	Plan implementation
			Environmental planning and management	Participation and facilitation
			Transportation planning and systems	

			Land use and infrastructure planning	
			Integrated development planning	
			Land economics	
			Social theories related to planning and development	
			Research	

The variable contexts that planners should master (also see Chapter 5), are vested and developed from the vision of restoration from South Africa's historical background. This is represented in the legislative framework as discussed in Chapter 4 of this study. The context that should inform planning decision-making according to SACPLAN (SACPLAN, 2014:10) is:

- The need to acknowledge and include the diversity of local needs and options: this includes the difference between rural and urban contexts, the variety of cultural traditions, as well as the differentiation between what is informal and what is formal. Here it should also be added that there is a need to distinguish between informality in cities, towns and areas far from metropolitan municipalities, which is at times termed as rural. Further to be added is the difference in each Traditional Authority. No Traditional Authority is the same as the others, and generalisation is not conducive to determining context.
- Enabling sustainable development patterns: The classic definition of sustainable development applies here. The offset between social fairness, economic effectiveness and environmental sustainability.

- Economic inequality: Planning inherently promote the enablement or provision of economically uplifting opportunities. The local needs and preferences should be reflected in the planning for development, as it is also required by SPLUMA. It should be mentioned that this is vested largely within institutional and regulatory development of legislation as well as the design of development. The decision-making power regarding development and land use management is vested within the local municipality. New development brings infrastructure to areas. The provision of this principle is beyond the scope of the typical urban and regional planner, although the planner has a good understanding of this and is guided in ethics by this principle. The principle is inherent in the development of a local Spatial Development Framework as well as the development of the wall-to-wall Land Use Scheme.
- The historical complexity of the rural areas and related land uses: traditional land practices should be integrated in planning approaches that also recognises formal and informal land use planning and land markets (SACPLAN, 2014:11). This complexity is discussed in Chapter 4 and 5. It should be noted that planning largely deals with formal practices, as it functions within a legal framework and is applied accordingly. The flexibility of the system is criticized, though more flexibility was built into the planning system by SPLUMA.

SACPLAN determined that a Professional Planner should be able to demonstrate a functional conceptual competence in the practice of urban and regional planning in South Africa. He/she should possess the ability to assess a situation that needs planning interventions and demonstrate possible solutions (RSA, 2013:20; SACPLAN, 2014:15-16). Planners need to be inherently professional in their leadership in all aspects. The requirements of becoming a professional planner entail demonstrated abilities within the prescribed competencies, which includes demonstrated practical experience – planning applied within a context (SACPLAN, 2014: 40).

2.3 The history of the planning discipline

Town and Regional Planning or Urban and Regional Planning as the discipline is known today, dates to the early 1900's (Cherry, 1982:1). It could be argued that planning has been practiced for thousands of years, if the historical cities of Ur and other ancient cities

(Mumford, 1989:62) are considered. The South African Planning system originally branched from British planning. A wonderful history of the British planning system can be read from Sir Peter Hall's (1997) book "Cities of tomorrow" first published in 1988. It also explains the history of American planning and other countries as well as the cross-pollination of ideas and ideologies (Hall, 1997). The term Town planning was first used for a few decades and then later described as Town and Country planning within British legislation, which was an Anglo-Saxon term. Currently the term Urban and Regional Planning has become more popular and relates more to the Latin version of the term. In the United States of America, the term City Planning is also generally used (Cherry, 1982:1).

It was initially practised by municipal engineers who administered regulations and evolved by means of the utopian visionaries and garden city movement that included a shorthand writer –Ebenezer Howard (Hall, 1997:88-97) and a biologist, Patrick Geddes. Other influential figures during the early 20th century practised as architects and then later as planners. These included Raymond Unwin (Hall, 1997:68-73; 97-108) and Patrick Abercrombie (Hall, 1997:165-172). They expressed a sense of social responsibility and influence in planning after the industrial revolution (Davoudi & Pendlebury, 2010) to ensure a better environment and quality of life for human settlements.

Ebenezer Howard and his vision of the Garden Cities of Tomorrow developed in reaction to the industrial revolution and housing crisis that the United Kingdom – though he was influenced by Herbert Spencer, Thomas Spence, Edward Gibbon Wakefield, James Silk Buckingham, Alfred Marshall, Charles Booth and Peter Kropotkin's ideas. He created what is frequently referred to in planning and more specifically as Utopianism. Frederic Osborn and Patrick Abercrombie, during the early part of the 20th century, were influenced by a vision of new towns or Garden Cities, building on the work of Howard. Patrick Geddes was influenced by Howard's Garden City model and furthered it in his "Survey-Analysis-Design (Plan)". During the early 20th Century, local government established planning departments to address growth and infrastructure issues in the United Kingdom. This included the urban beautification projects, also in reaction to rapid urbanisation because of industrialisation. Planning was rationalised into street systems and the regulation of land uses. It included the planning of parks, water quality, location of public facilities, redevelopment of certain urban areas, social housing and more. Universities started

courses in training city/town and regional planning. Planning was practised, at times (by architects, land surveyors and civil engineers). Planning courses in South Africa were first offered as part of the degree courses for Land Surveying, Engineering and Architecture qualifications. It formed part of the Surveying course at the University of Cape Town from 1913 and in Architecture at the University of Witwatersrand and University of Cape Town as Town Planning and Landscape design modules from 1927. The first diploma in Town Planning was offered by a British institution, and the first Town and Regional Planning Course was offered at the University of the Witwatersrand in 1946 (Muller, 1993:7). Planning in South Africa was intended to control urban development through local authority town planning schemes and township approval procedures (Muller, 1993). South African planning was largely influenced and established by the United Kingdom during the early 20th century. Local authorities were established in the provinces (or as it was called – republics) at that time, namely the Transvaal and the Orange Free State and then later all four provinces in the Union (Mabin & Smit, 1997:195-196). It entailed land subdivision, the layout and establishment of townships and later the use of zoning and land use control and later criticised for being too technical (Mabin & Smit, 1997). Planning after the first World War in South Africa was seen as a functionalist tradition of planning (Todes, 2011:117). It could be said that Planning in its original state was influenced by living conditions and the negative circumstances of people, which drove and almost required its existence. It was aimed to better the lives of people and to control negative elements in terms of development – it was thus a reaction thereto.

In South Africa, Urban and Regional Planning was influenced by America, France, Germany and principally the United Kingdom (Muller, 1993:5). After the formation of the Union of South Africa on the 11th of July 1911 in Pretoria, the architect, Sir Herbert Baker, included in his speech the need for the “the art of town planning” related to civic design and schemes in South Africa (Muller, 1993:5). It was left to land surveyors, engineers and architects in South Africa to plan as deduced from Muller’s (1993:5-6) article. The principles of planning as an exploration between the different disciplines created debates that entered the new field of town planning during the 1920’s (Muller, 1993:6). It was during 1916 that a civil engineer E.J. Hamlin, called for professional collaboration in town planning that would include the bodies of knowledge of the surveyor, the engineer, the architect, the sociologist, the landscape architect, the historian and the legal expert

(Muller, 1993:6). Three of the professional bodies of civil engineers, architects and surveyors, met in London during July 1913 on town planning matters, just before the UK's Town Planning Institute was formed in 1914 (Hall, 1997:321). It was acknowledged during that time that South Africa would need different kinds of professionals to manage context-specific town planning (Muller, 1993: 6). Even during this time, planning was acknowledged as context-specific for analysis, decision-making and implementation. There was even then a lack of co-operation between government departments and local authorities. It was noted that future planning was not prevalent within local authorities with regards to planning (Muller, 1993:16). During 1919 the then government established the Transvaal Town Planning Association, influenced by Patrick Geddes in surveying Johannesburg and devising regulations for town planning and producing the first Transvaal Town Planning and Townships Ordinance (Muller, 1993:6). General Jan Smuts, the colonial secretary in the Transvaal Province, called for the government to develop legislation to prevent unplanned townships in being haphazard developments (Muller, 1993:6). He introduced the Townships Act in this province (Muller, 1993:6). During 1919 the Garden City Trust, as a body, was approved with the main purpose of developing better housing and social conditions for people, where Pinelands in Cape Town was developed by a British architect-planner, A.J. Thompson, a mentee of Raymond Unwin. This introduced a coherent design approach in South Africa and influenced land use zoning (Muller, 1993:7). Planning education started as a subject course for degrees in architecture, surveying and engineering and it has always been inherent in the land surveyors training. More specifically, town planning formed part of the survey course at the University of Cape Town from 1913 and from 1927, architecture courses in Johannesburg and Cape Town included town planning and landscape design as modules. A diploma in Town Planning was offered to students from South Africa by the Institute of British Architects during this same time (Muller, 1993:6). The Town Planning Association of Cape Province was formed during 1931 to encourage town and regional planning principles and education. Professor Geoffrey Pearce, who was the Head of the School of Architecture at the University of the Witwatersrand as well as being the President of the Transvaal Town Planning Association, petitioned for specialised planning education during 1927. Pearce continued to lecture Architecture and Land Surveying students on planning, while writing academic articles on the subject. He was influenced by American planning (Muller, 1993:7). The first town and regional planning

course was offered at the University of the Witwatersrand in 1946 (Muller, 1993:7). The professional body of the South African Institute of Town Planners was formed during this time, which worked intensively for the regulatory planning legislation to be established, and which resulted in the Transvaal Province's Town Planning Ordinance in 1931 – similar ordinances were enacted across the other three provinces. The primary purpose was to control urban development through the local authority town planning schemes and township approval procedures (Muller, 1993:7). Schemes were prepared by British planners for Pretoria, Cape Town and other towns and cities. Thereafter, the South African Branch of the Town Planning Institute of Great Britain was established by John Parry in 1935 in Cape Town and officially formed a branch of the TPI by 1940 - they influenced education and the profession (Muller, 1993:8). The branch later escalated to the Southern African Branch that included other southern African countries. In 1944, during a meeting in Johannesburg City Hall, and the South African Institute of Town Planners evolved into the South African Town and Regional Planning Institution in 1951. During 1954 a meeting at the Central Block of the University of the Witwatersrand, the South African Branch of the Town Planning Institute of Great Britain and the South Africa Institute of Town Planners consolidated into the South African Institute of Town Planners with an affiliation with the Council of the TRPI (Muller, 1993:8). During 1945 British universities offered town planning courses at the Universities of the Witwatersrand and Cape Town. During 1944 a two-year post-graduate Diploma in Town Planning in architecture, land surveying and civil engineering courses developed, which were not endorsed by the Southern Africa Branch at the Town Planning Institute, but was endorsed in 1947, when the School of Town Planning at the University of the Witwatersrand was also recognised (Muller, 1993:8).

Table 3: Institutions that provide urban and regional planning qualifications

Institution	Initiated	Established	Focus area	Current Faculty and School within University
British Universities at Wits and UCT	1945	1947	Post-graduate diploma in architecture, land surveying and civil engineering graduates.	
Wits	1946	1947	Architecture and Land Surveying	Faculty of Engineering and the Built Environment School of Architecture and Planning; Planning Department
NWU (then still the Potchefstroom University)	1962			Faculty of Natural Sciences; School of Environmental Sciences and Development; Planning Department
University of Cape Town (UCT)		1965 (Department of Urban and Regional Planning)	Originally started in School of Architecture. Geomatics, Urban Design, Landscape Architecture, City and	Faculty of Engineering and the Built Environment; School of Architecture, Planning and

			Regional Planning. Orientation: Spatial and environmental justice	Geomatics. The School of Construction Economics and Management also provide planning modules.
University of the Free State (UFS)		1979		
University of Venda (Univen)	1982	2007(?)	Urban and Regional Planning – rural development	Faculty of Science, Engineering and Agriculture Department of Urban and Regional Planning
University of KwaZulu-Natal (UKZN)	1960s	1975	Originated in the Department of Civil Engineering	
University of the Western Cape (UWC)				
University of Pretoria (UP)	1959	1969	Originated in Department Land Surveying. Undergraduate programme in TRP 1969	Faculty of Engineering, Built Environment and Information Technology (EBIT); School of the Built Environment;

				Department of TRP
University of Johannesburg (UJ)		1989 (Technicon Witwatersrand)		Faculty of Engineering and the Built Environment; School of Civil Engineering and Built Environment; Department of Urban and Regional Planning
Cape Peninsula University of Technology (CPUT)	1970s		Technical	Department of Civil Engineering, Land Surveying and Cartography
Durban University of Technology (DUT)	1984 (phased out in 2019)	2020 (new)	Technical	Faculty of Engineering and the Built Environment;
University of Stellenbosch (SU)		Phased out in 2004		Centre for Regional and Urban Innovation and Statistical Exploration (CRUISE)

Sources: Muller (1993) and Schoeman (2008)

Urban and Regional Planning is an applied science (Faludi, 1973) which cannot function without consideration of the related context (Watson, 2018, 2006, 2003; SACPLAN, 2014:10-11). Its practices are located within the confines of the legislation that enables it (RSA, 2013; Laubscher et al., 2016).

It is constant decision-making within methodology and practice (Faludi, 1973, 1983) relevant within a certain context, which could frequently be seen as uncertain (Faludi, 2009; Hillier, 2011). The context of planning is directly and indirectly related to the management and the development of land (Van Wyk, 2012) as well as governance (Healey, 1998; Pieterse, 2017; Van Wyk & Oranje, 2014; South Africa, 2013). Hall and Tewdwr-Jones (2020:9) indicate that a key characteristic of urban and regional planning is that it is multi-dimensional and multi-objective and could be regarded as a process (planning) (Hall & Tewdwr-Jones, 2020:10). Watson maintains that planning practitioners should have a more interdisciplinary sensibility to manage the problems faced in context (Watson, 2013). The interdisciplinary sensibility could be seen within the developed capabilities of a planner in the SACPLAN identified competencies of a planner (see Section 2.2).

John Friedmann in his professional career of 62 years understood planning to be a process that spanned time periods and was aligned from knowledge through to action within four planning cycles identified in his book, *Planning in the public domain* (1987) (Sanyal, 2018:9). He viewed planning practice as essential for planning and saw practice within two larger entities – the one as “planning from the bottom”, where radical planners challenged the state and – the other “planning from the top”, where bureaucratic planners serve the state (Sanyal, 2018:9). In South Africa, land use management functions and is decided on a local municipal level (RSA, 2013: 44), with public participation and the inclusive involvement of the community and individuals that forms part of the legal framework, inherent in the planning process. The Spatial Planning also includes a multitude of diverse considerations that are woven into the Spatial Development Frameworks (SDFs), particularly referring to the local municipal SDF. These considerations are not always visible on the SDF itself, because it substantiated the development of the SDF itself. This implies that planners are legally required to work from “the bottom up” in consideration of the Constitution (RSA, 1996) and SPLUMS (RSA, 2013) and the relevant by-law, scheme and SDF.

Friend and Jessop (1977) as introduced by Faludi (1973,1983) relate Operational Research to planning and define it as “*the attack of modern science on problems of decision-making arising in the management of organisations; it is an application of*

science to the practical end of assisting decision-makers” (Friend & Jessop, 1977:xx), and it furthermore, also relates to ‘technology of choice’.

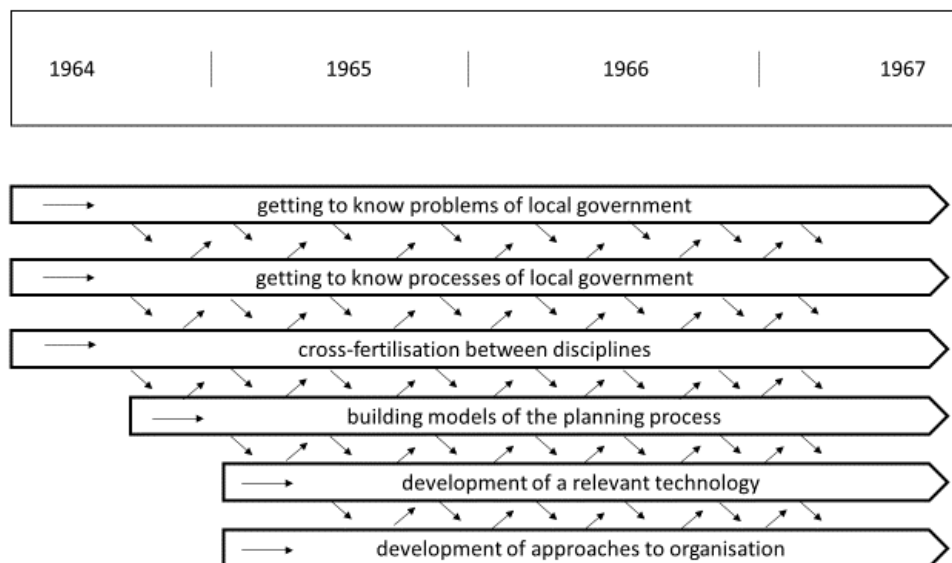


Figure 7: The figure below is an extract and slight adaptation from the book *Local Government and Strategic Choice* by Friend and Jessop (1977: xx). The figure refers to the specific research done over the period of time from 1964 until 1967 and how it developed.

Figure 1’s diagram indicates the six parallel streams of activity that had an influence on the research done by the project team that specifically related to the local government in Coventry (England) related to planning and policy formation. The research also involved a review of the city’s development plan and included education, transport and capital budgeting. The research team followed a systems approach to the study to obtain a balanced view of the operational and social systems. The figure depicts the process of learning within streams one to three; getting to know problems of the local government; getting to know the processes of local government and the cross-fertilisation between disciplines. The learning of the first three streams complies with the conceptual models of the processes and an understanding of the basic relationships and how they might change. The conceptualisation of these models builds on the development of ideas about the appropriate forms of technology of strategic choice, as well as the substance needed by the appropriate organisational forms.

From this process the researchers continued to develop an analysis of the nature of planning as a continuous dynamic process. Through this a depiction of planning is formed as a *process of strategic choice* that also necessitates the ability to consider future situations and adapt accordingly (Friend & Jessop, 1977). This is typical of the South African spatial planning and land use management system and its inherent processes as well that is framed in SPLUMA (see Chapters 4 and 5). It establishes the governance roles and frameworks as the planning administration and prescribes planning processes providing contextual processes in subsequent byelaws (RSA, 2013). This is then taken further to identify the characteristics of the planning process in any organisational setting. The planning process includes characteristics in a legislative situation and also relates to basic types of operational problems include:

- Finding feasible solutions to problems related to various related choices (Friend and Jessop, 1977). This relates to the context and the planning application (SACPLAN, 2014:15-16) that is vested with a legal framework (RSA, 2013:18,20).
- Expression of preferences between alternative solutions and considering deficient information and the effects it might have (Friend & Jessop, 1977). A planner is trained and skilled to consider all relevant information within the planning field and what that might entail as well as the capability to judge its future and possible impact (SACPLAN, 2014:14-41).
- The identification of hidden uncertainties (Friend & Jessop, 1977). This is captured in the required generic and functional competencies of a planner functioning in the planning system (SACPLAN, 2014:14,32).
- The identification of the choices of actions that may advance the decision-making [planning context] (Friend & Jessop, 1977). The spectrum of consideration with underlying principles to promote decision-making in providing solutions or addressing a problem in planning is indicated as part of the core skills and competencies of a planner (SACPLAN, 2014:20-31).
- Consideration of the trade-off between current pressures and commitment and future choices (Friend & Jessop, 1977). This translates to the current principle of

Sustainable Development within the South African Planning system (RSA, 2013:18, SACPLAN, 2014:8-9).

The research of Friend and Jessop (1977) further identified six elementary types of organisational problems which involve the planning process, a complexity which includes the cross-sectional integration of organisational boundaries within and between an/a authority/ies and/or other parties. These problems include:

- Development of systems for the organisation of planning activities.
- The related authority for strategic control.
- The upkeep of adequate information flow and access.
- The provision of democratic guidance.
- The establishment of a mutual language.
- The requirement to consider the personal and group motivations of participants.

The South African planning system relates this to the governance structures in which the administration of the planning system is vested. It prescribes the organisation of the planning tools (activities) that includes all related to land use planning and spatial development frameworks as well as the decision-making body(ies) (RSA, 2013; also see Chapter 3).

Theorisation about and of planning is a subject of debate. There are different levels of theorisation, though planning can be influenced in legislation and personal appointment within the philosophical and meta-theoretical sphere. It is useful to understand all spheres of theorisation.

2.4 Planning and theorisation

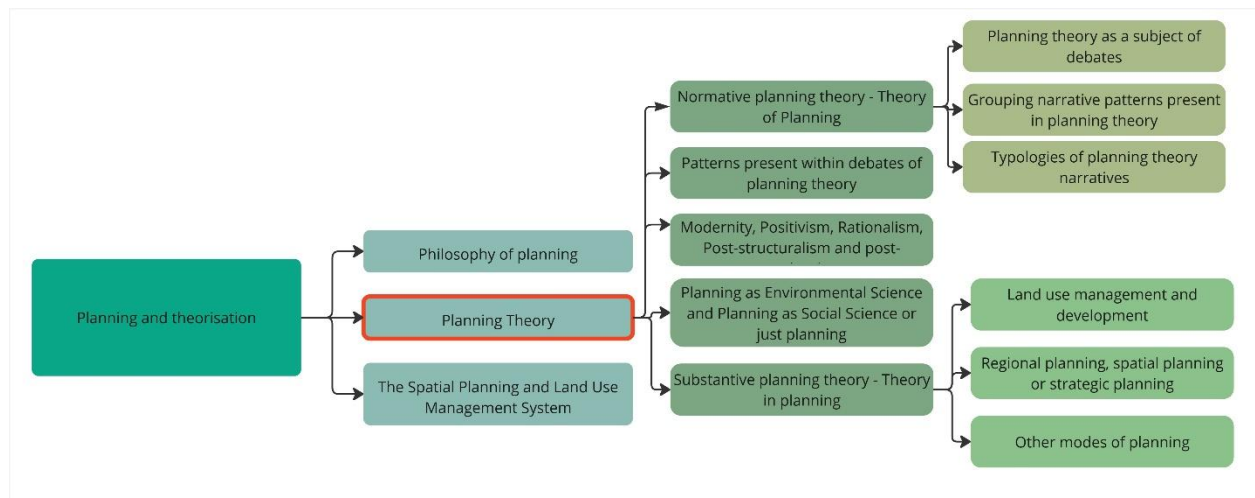


Figure 8: Planning and theorisation section overview

This study differentiates between theory of planning and theory in planning as Faludi divided planning theory into these two categories. Theory of planning largely includes normative theory, which includes different narratives within the planning environment. Normative theory relates to measuring if we reason well or badly, related to logic (Talbot, 2015:6). The narratives were analysed in Combrink (2009). It provides clear patterns in the development of the present narratives that developed over time. The narratives include key words that form identifiable patterns in arguments. The presence of these patterns of words identifies the narrative that is typically influenced by different ideologies or philosophical beliefs of the authors. Theory in planning relates to substantive theory that directly relates to the function and operation of planning. It explains the tools that planners work with to function and apply planning. However, philosophy did become part of planning education and does influence planning debates.

The narratives that form planning theory are present in the arguments and perspectives, as well as the approaches of planning in South Africa. These narratives affect how planning, its tools and frameworks are seen and approached. This may well present the validity of planning in certain perspectives. Not all planning perspectives focus on planning itself, as will be discussed below. If there are narratives, which are prevalent, it could cause an unbalanced view of planning with definite gaps in argument and substance. Continuous use of an unbalanced planning narrative could erode the quality

of planning and the planning system itself. The identification of substance in planning is crucial and can be affected by choice of narrative for better or worse.

2.4.1 Philosophy of planning

Philosophical underpinnings did not originally form part of the development of planning as a discipline. Planning as a discipline developed in reaction to the environment (see Section 2.3). Planning education necessitated the formation of concepts and frameworks to train or educate future planners. This gave way to different interpretations of what that meant (see Section 2.4.2.1). There are different levels of theorisation.

Theorisation in the highest level of abstraction relates to Philosophy. It is an active attempt to understand the world. It primarily focuses on the “How?” of the world. The methodology of Philosophy is the adherence to logic and constructing an argument (Talbot, 2015). An argument could be said to be a set of propositions (premises) reasons to believe another proposition. Logic is derived by moving from one set of thought to the other in an understandable sequence. There are different types of logic just as there are different sets of arguments. A desire to know something is the foundation of a question. There are different levels of understanding and conceptualising. Philosophy forms the broadest overarching of the other levels, with the greatest form of abstraction and the greatest form of unity in understanding (see Figure below). The levels could be ascribed and differentiated in the concentration of focus and detail. The broader the outlook and understanding the more philosophical it is. In more detail from Philosophical understandings could be the Meta-theoretical level or sphere of understanding. Within the Meta-theoretical level or sphere, many different theories could be gathered under a certain Meta-theoretical viewpoint (see Figure below). Within theories there are multiple debates, as is the case within any other level or sphere of understanding. There are different theories categorised within different spheres of disciplines and fields of activities or matter or matters. In the different fields or disciplines are the real-world experiences or perhaps Empiricist foundations. These are observations, interpretations and experiences within the real world.

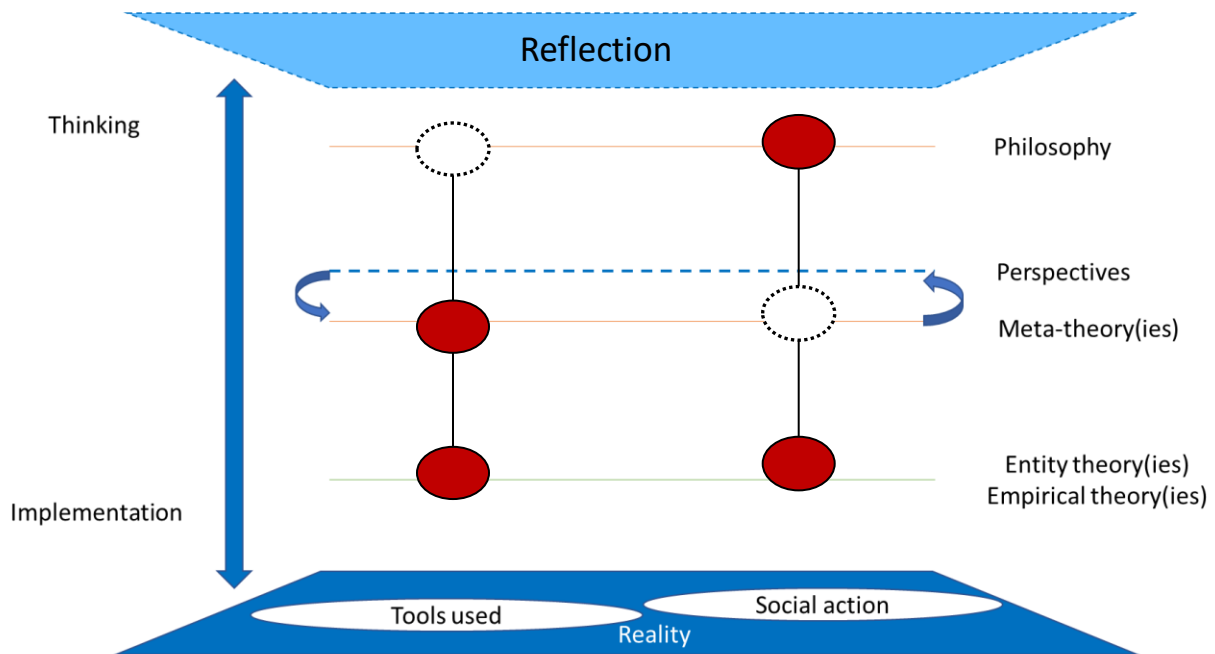


Figure 9: The different levels of theorisation situated between the sensory world (reality) and reflection (Source: Combrink, 2010)

Any form, topic, discipline or understanding could be distinguished and could be said to form a line throughout all levels of understanding (see Figure above). The choice of the level of understanding that one uses is dependent on the context of the problem that needs to be solved, or the question that needs to be answered. The one level of sphere of understanding informs the other – knowingly or unknowingly. This might also involve the person making the decisions, thinking or making plans.

Planning and its relationship with philosophy developed over time to the point that planning theorists write about the philosophy of planning and draw on other philosophers' work in performing their own work as related to planning. There are planning theorists who borrow theories or philosophies from other areas or disciplines, finding relevance in planning by adding insight and perspective, arguments and contexts of planning and planning theory. Popular and unpopular philosophies that are referred to and drawn from within planning theory are those of Habermas (1984, 1989), Foucault (1970, 1972), Popper

(1972, 1966), Mannheim (1940), Rawls (1958) and Castells³ (1983), to name a few. Nigel Taylor (1998,1980,1999, 2003) have approached Planning Theory as a subject and interpreted the nature of planning and planning thought. Nigel Taylor (1980) criticises the application of just any philosophy or philosopher in planning by stating that some of these philosophies are unclear and unquestioned and calls for planning theorists to properly delve into philosophy in planning. He initiated the philosophical discussion by relating planning to Ethics and Knowledge (Epistemology), which are branches of philosophy. He mentioned that the sphere of philosophy in planning is engaged in “*why to plan*” – where philosophical judgements are made concerning the nature, premises and purposes of planning and emphasised the need to assess assumptions (Taylor, 1980). Reading literature on planning or urban studies reveals strong underlying ideologies that are vested in the “*why to plan*” or perhaps rather “*why not to plan*” and this also relates to different perspectives on what planning is. Ethics, as mentioned by Taylor (1980) are related to decision making is inherent to planning. It further relates to two principles of social justice: *Utilitarianism* as portrayed by Jeremy Bentham (1789) and *equalitarian principles*. Utilitarianism is characterised with arguments on “what we should do” and related to a modernist manner of making decisions related to the individual. It portrays the social justice principle of maximum happiness. The principle of equality holds that it is morally good to favour the weak (Taylor, 1980). The philosophical branch of Knowledge or Epistemology relates to the discovery and the validating knowledge of problem situations meant to inform planning. There are different theories of knowledge (Epistemology) of which the Philosophy of Science and the logical positivists rely on verification in the case of scientific or empirical plans, and in these observations, it could positively support, verify or justify a scientific theory (Taylor, 1980). There is an area that is separate from empirical understanding that should be developed in planning. The area of fundamental philosophical judgements that are made about the purposes, premises and nature of planning (Taylor, 1980).

Taylor (1980) mentions that Moore (1978) stated that planners must not only ask how to plan but also *why* to plan. He states that Philosophy is an activity that is involved with the

³ See “Castells, M. 2023. The network society revisited” for an update on the author’s views.

critical examination and explanation of basic assumptions underlying our ideas and beliefs, and that also includes theories and our intentions and actions. It seeks to critically examine and to explain important questions about theory and or practice. Philosophers investigate the logic of theories and practices to explain whether they are rationally justifiable. He relates to Wittgenstein (1921) who states that philosophy aims at the logical clarification of thoughts (Taylor, 1980). Philip Harrison promotes speculative realism as a new philosophical thought in planning theory to address anti-realist ontology in planning theory (Harrison, 2013). Faludi (2004) maintains strategic choice as a planning philosophy as per John Friend and Neil Jessop (1977) in their research about strategic choice called *Local Government and Strategic Choice: An operational research approach to the process of public planning* (mentioned in Section 2.3 above). After the release of this article Friend did more research on policy and local government that then led to a postscript for this book. It indicated that in the situation of real-life decision-making, abstract approaches were used and changed into practical tools for managing pressures of decision-makers, using a qualitative approach in context. This was later reflected on as a move away from 'system-centred' to a 'decision-centred' point of view.

Faludi (2004) mentions the research done by Thomas et al. (1983) that took the work of Friend and Jessop even further in *Public Planning: The Inter-corporate Dimension*. It identified three classical forms of uncertainty that are related to the environment, political values and areas of choice and added a fourth, viz. uncertainty, within the procedures (Faludi, 2004:229). Faludi (2004; 1982; 1986; 1987) applied strategic choice as a mode of work in the 'decision-centred view of planning' that focused the attention of plans around operational decisions. The 'plan' is not the primary focus, but gaining a good understanding of the problems the planner is faced with currently and possibly in the future to enable better decision-making in the now. He describes planning as a system of positions and practices and strategic action.

Planning is an applied science in the context of this thesis. There are other ways of interpreting and understanding planning and most all of them are valid, because of the diverse nature of urban and regional planning contexts.

2.4.2 Planning theory

Different planning theories focus on different things. It might be useful to refer to Faludi's (1973) work in his soft division of "Theory of planning" and "Theory in planning". He indicates that they do influence each other and are not completely compartmentalised - hence the mention of the 'soft' division. Theory of planning, which is particularly regarded as normative and includes philosophies related to planning, focuses more on the questions of 'what planning is' and 'why do we plan' and perhaps for 'whom' – for 'whom' do we plan could overlap with Theory in planning. Theory in planning, which is inherently more substantive, is related more to the question 'what do we plan' and 'how do we plan'. In its nature it is closer to reality and the implementation of planning. These kinds of articles, research and studies involve practice and is embedded, guided and curbed by legislation and policy. 'Theory of Planning' and 'Theory in Planning' are also often combined or interrelated in research – the Theory of Planning or normative theory influences the approaches and stances that are taken by the researcher and fundamentally how he researcher views the world of planning. This influences the motivations and the angle that the research takes to address certain issues – in many cases it could also determine the issues to be addressed in research.

2.4.2.1 Normative planning theory: Theory of planning

The body of Planning Theory, if it were to be called a subject, could be regarded as situated within the sphere of "Theory of planning", also related to normative theory (Faludi, 1973) which features debates and arguments, written from various perspectives, that relate to "what" planning is, or more frequently, what it should be. There are various narratives and debates within planning theory, cultivated by arguments and the patterns they form. The different ideologies are prevalent in the foundations of the arguments that fit the related patterns of arguments. Context is inherent, crucial and vital in and to planning, but so is its procedure and overarching framework. Planning is institutionalised, specifically in South Africa, governed and instructed by the state in whatever form the state agrees and legislates it into. Still, there are many ways of thinking within the vast body of planning theory and what the nature of it is. What the body of planning theory is is also a part of the debate.

2.4.2.1.1 Planning theory as a subject of debates on what planning is, should be or should not be

Friedmann indicated that there was no agreement to what planning theory is (Sanyal, 2018:9). Beauregard sees Planning theory as dedicated by certain scholars to exploring what it means to plan (Beauregard, 2020:7). Sanyal takes a more assertive or perhaps dismissive road in stating that it has been criticised since David Harvey's doctoral article was published (*Planning the Ideology of Planning*) in its inability to guide planning into action. Sanyal indicates that Harvey mentioned that Planning theory was used to legitimise academics' role in capitalist societies, which do not consider the development of capitalist economies (Sanyal, 2007: 251). Steyn (2019), indicates that there are various ideological ways of thinking that influence planning theory and that the answer does not lie with just one influence or approach. Watson and Satgé (2018) indicate that planning theory includes debates of normative concepts related to planning, though it is not stated as a definition of planning theory. In the *Routledge Handbook of Planning Theory* (Gunder, Madanipour & Watson, 2018), planning theory is described as a narrative that should be local and contextual, as theory is developed because of certain contexts and conditions of society – reflecting current issues. These contexts might be social, political, economic, cultural and/or technical within the environment (Gunder, Madanipour & Watson, 2018:2). Harrison (2014) argued that planning theory was formed by anti-realist ontology and is void of epistemology (production of knowledge), trying to understand meaning and not successful in engaging with the urban context. Assche et al. (2017:225) indicate that planning narratives are not the same as planning in practice and that many narratives are thought to discuss planning but does not equate to planning as it excludes key components thereof. Hillier and Healey (2008:3) indicate that planning theory could be seen as an applied social science that was initiated at the University of Chicago during the 1940's as it was narrated by Friedmann (1973) and Faludi (1987). Faludi makes a soft distinction between theory *of* planning and theory *in* planning (1973) – with emphasis on the 'of' and 'in' planning. Theory *of* planning relates to more normative theories, and theory *in* planning relates to more substantive and positive theories (Faludi, 1973) as it is also indicated in this thesis. Exactly what planning theory is, is widely contested as indicated above and there is no general agreement on what it is and what it entails. Also present among the different ways of thinking of planning are views that could be seen as

fundamentally anti-planning or just holding objections against planning itself. This could perhaps be broken down in certain arguments as criticism, which could be used constructively in the thinking of the body of planning theory, but there are arguments aimed at being an absolute stance against planning itself.

2.4.2.1.2 The grouping of narrative patterns present in planning theory

In consideration that the body of planning theory comprises many ways of thinking, or different narratives, and that there have been quite a few attempts to identify the relevant typologies within planning theory, it might be useful to have a brief look at the construction of a paradigm. Thomas Kuhn was and is regarded as creating a benchmark for the admission and change of paradigms over a spectrum of time. Though it could be argued that ways of thinking differently about planning do not resolve to the categorisation of a 'paradigm', perhaps it does. It does make it somewhat easier to follow debates and subsequent arguments if the different ways of thinking about planning are perceived as different paradigms. Kuhn's work is a criticism of positivism and naturalism. Kuhn delineated the characteristics of paradigms using the following criteria to make sense of the "Disciplinary matrix" (paradigm). [*Disciplinary matrix* refers to "disciplinary" because it is the common possession of the practitioners of a professional discipline and "matrix" because it is composed of ordered elements of various kinds (Kuhn, 1977: 297). Three of the key concepts to the cognitive operation of the scientific community (interchangeably used with the term 'paradigm') are (particularly within the philosophy of science):

Table 4 : Disciplinary matrix as the organisation of a scientific community

Disciplinary matrix or paradigms as the organisation of scientific community: key cognitive concepts that group scientific communities	
Symbolic generalisations:	The components of the disciplinary matrix. Key symbolic or word generalisations
Models:	Metaphysical orientations towards certain analogies, ontologies, models of paraphrasing or taxonomizing the domain of reality being studied. Methodological values that characterise the philosophical underpinnings of the scientific community
Exemplars:	Concrete problem solutions accepted in general by the scientific community. Positive core

2.4.2.1.3 Typologies of planning theory narratives and/or conceptual frameworks

Patsy Healey

Patsy Healey, Glen McDougall and Michael J. Thomas produced a typology and historical overview of planning thought or theory in their work namely *Theoretical debates in planning: Towards a coherent dialogue*. It typified seven theoretical positions in planning theory:

- Procedural planning theory
- Incrementalism and other decision-making methodologies
- Implementation and Policy
- Social Planning and Advocacy Planning
- Political economy approach
- The new Humanism
- Pragmatism (Healey et al., 1982:7) (see Figure below).

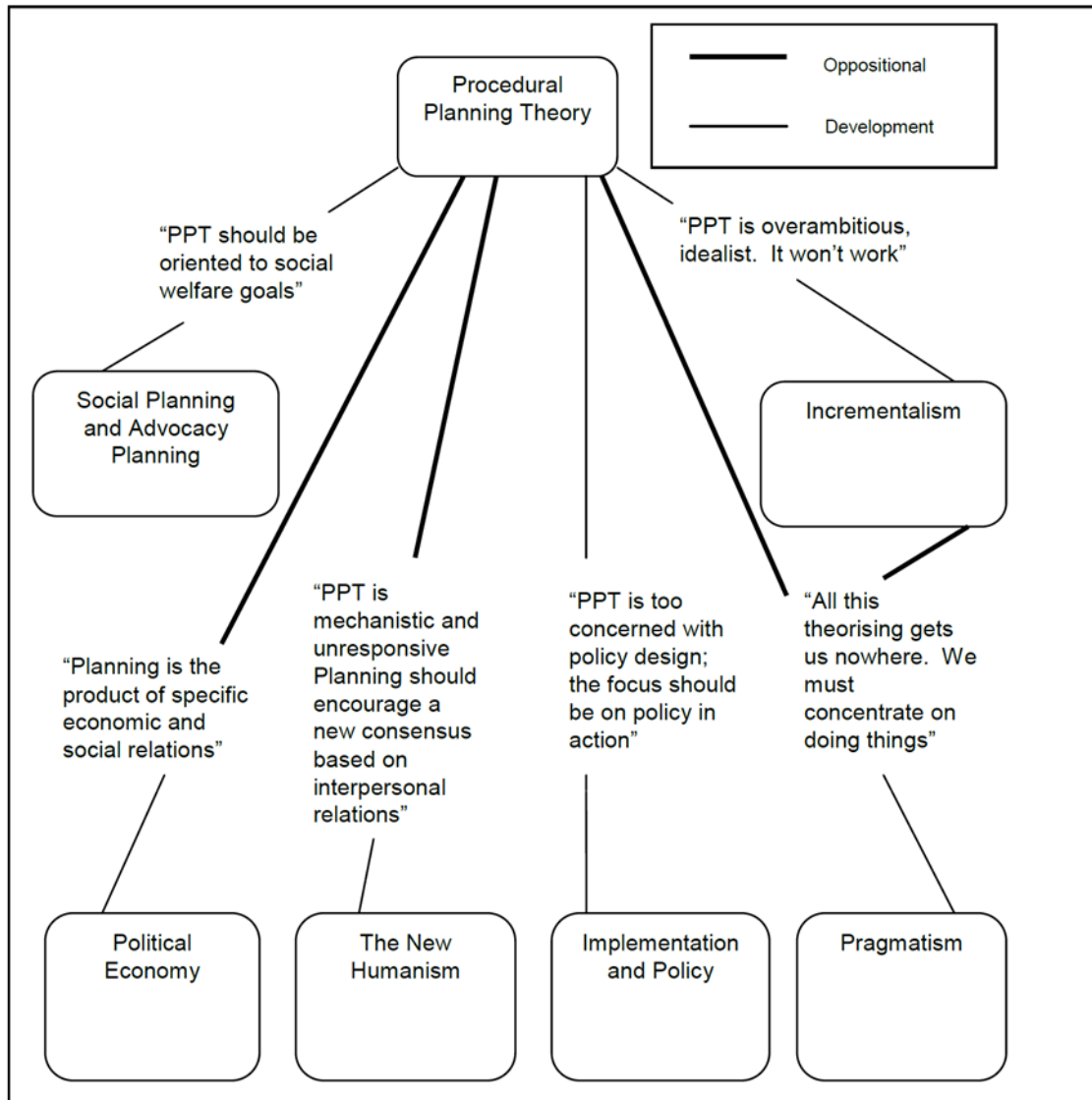


Figure 10: Theoretical positions in planning theory during the 1970s

Source: Healey et al., 1982:7

Healey et al. (1982) frequently relate Procedural Planning Theory to the work of Faludi (1973). They perceive Procedural Planning Theory as problem-solving through decision-making methods that are founded in rational procedures. In their view it assumes planning to be void of content or context, cannot be adopted into any societal context, are technocratic, deny the political nature of planning practice, is managerial and is too abstract.

They indicate that almost all the other kinds of thinking of planning evolved in reaction to procedural planning theory. They identify other kinds of planning theories indicated as

Incrementalism (that includes other theories related to decision-making methods), strategic choice and implementing strategies (developed in reaction to the lack of policy and implementation within procedural planning theories), Goal-directed planning (includes social and advocacy planning in critique of procedural planning), Marxian revived theories (that include political economy and relate to social justice and criticise capitalism and the state), Idealism (also the new Humanism as per John Friedmann (1973) and Donald Schon that seeks the organisation of society based on individual interaction), and Pragmatism (that relates to getting things done in relation to the values within a society). Their work indicates that they believe in the development of the other ways of thinking about planning, namely political economy, new Humanism and Pragmatism within planning theory developed in reaction to procedural planning theory and indicates procedural planning's 'fall' (Healey, 1982: 8-22; Combrink, 2010:32-35). The work does not acknowledge that Faludi emphasised that the framework or constants in planning (as observed by planners) change in context, that it is discussed on a meta-theoretical level (and cannot contain context (he acknowledges context on a substantive level as that is where it is considered) and that he encourages social learning. This is worth mentioning as it depicts that many other ways of planning theory have developed in reaction to Faludi's work.

John Friedman

John Friedman perceived planning as a political act (Sanyal, 2018:11). He set out to improve bureaucratic and technical planning by reviewing and rethinking the nature of planning (Sanyal, 2018:11). In his book *Planning in the Public Domain: From knowledge to action* (1987) he identifies traditional planning as it developed during the late 18th century as having a "legacy of reason and democracy". He distinguishes planning thought in the form of social reform (Radical), planning as policy analysis (Conservative), planning as social learning (Conservative) and planning as social mobilisation (Radical) (Friedmann, 1987:73). Social Mobilisation was his favourite, a form of strong critique against conventional planning and he therefore promotes social transformation (Sanyal, 2018:11). He determined that each tradition could be identified based on how its knowledge is associated with action (Friedmann, 1987:74; Combrink, 2010:23).

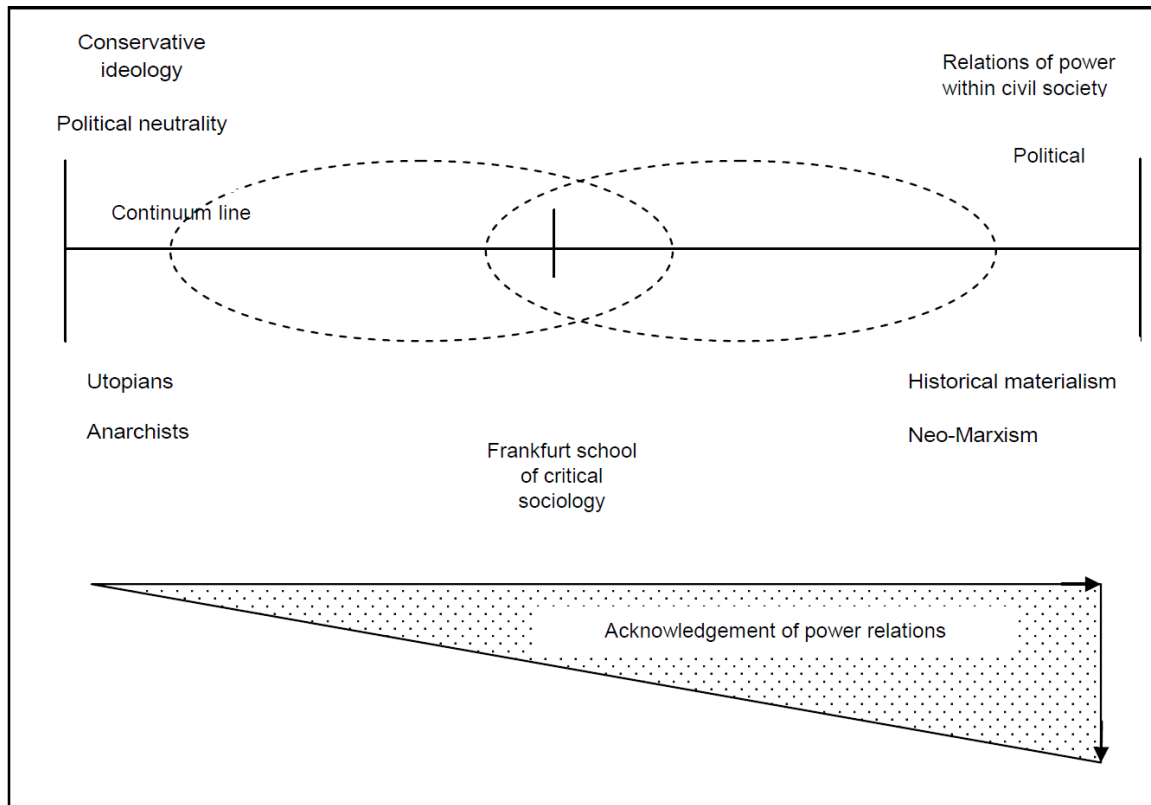


Figure 11: Different ideologies represented on a continuum as seen through power relations by John Friedman (Friedman, 1987:54-63)

Source: Combrink (2010)

The Figure (above) indicates a summary from Friedmann's book (Friedmann, 1987:54-63). It places the mentioned ideologies related to planning thought on a continuum, with a representation of power relations. The more politically neutral ideologies as identified with Utopians; Anarchists are considered conservative and not acknowledging power relations. The ideologies that acknowledge a high level of political thought and power relations are identified as Historical materialism and Neo-Marxism. He places the Frankfurt School of Critical Sociology as being in the middle of this spectrum. This school of thought was born from a radical critique to capitalism and technical reasoning, with Hegelian and Marxist foundations (Friedmann, 1987:55; Combrink, 2010:28). John Friedmann could be argued to be one of the most influential planning thinkers of his time. Some of the theorists that he acknowledged as having influenced him in the significance of social learning was Amitai Etzioni (1968), Donald Schön (1971), John Dewey (1904)

and Edgar Dunn Jr. (1971) (Sanyal, 2018:13). He progressively positioned himself as a Radical Planner who “,,, focussed on planning from the “bottom up” – built on the collaboration through communities and challenging the bureaucratic planners of the state, which sought to approach planning from the “top down” (Sanyal, 2018:9). He wrote from a perspective that was critical towards the original and older narratives and approaches to planning – or planning in its original state. His way of interpreting planning is seen through the eyes, relations and connotations of power and political focus. He considered planning as a social science and deliberately ignored theories of technical persuasion, like Urban Design and neo-classical economics as well as “allocative planning” for “system maintenance” that embodies state power that functions mechanically (Sanyal, 2018:8,11). He did not agree with technocratic planning approaches that were centred on economic growth and industrialisation. He was not against capitalism, as David Harvey (1973) and his compatriots were, he blamed bureaucratic planning on economic, social, political and spatial theories of modernisation (Sanyal, 2018:10). Friedmann believed that planners were answerable to “the people” or communities, rather than the state (Sanyal, 2018:10). It seems as if he posed the view of the people as opposed to the state, in a way the state is opposed to the people and does not carry their best interest. In certain countries this could be true, but many state governments pursue the purpose of the public good and have an approach to uplift the poor and could not be said to be in direct opposition or enemy of the people. He did cherish democracy (Sanyal, 2018). Planning education, in his earlier view, should not have been focused on analytical techniques and methods-based courses and thought it to be technocratic thinking that dismisses the political nature of planning (Sanyal, 2018:12). In later years he agreed that planning should encompass normative thinking as well as technical knowledge but still held that politics and not technology formed the core of planning, in line with the underlying idea of social justice (Sanyal, 2018:12,13).

Oren Yiftachel

Oren Yiftachel (1989) in his research work *Towards a new typology of planning theories*, frames three larger debates within planning theory (see figure below). They are mentioned as the Analytical debate, Urban Form and the Procedural debate. The analytical debate relates to the question ‘What is planning?’ and frames a societal and political sphere of planning thought. The Urban Form debates, with the underlying

question of ‘what is a good urban plan?’, relate to land-use planning and control that are directly related to physical planning. It tends to solve urban problems through land use planning. It originated from the modern movement of architecture and social reform and transpired into urban sustainability. The Procedural debate, associated with the question ‘what is a good planning process?’, is concerned with the ends and means of planning and the evolution of decision mobility. It relates to planning as design, state policy and the rational comprehensive methods, as well as systems planning (Yiftachel, 1989:26,30; Combrink, 2010:30-31). He structures his categorisation or typology in such a way that it could be said that the three different types of planning theory represent different processes of planning, which are not in conflict with each other (Yiftachel, 1989:30; Combrink, 2010:30-31). Yiftachel’s approach to framing planning theory and its approaches to thinking are significant and original. It also represents that most of the theories are not in conflict with each other, they are supportive and self-functioning – they are planning instruments, and they are different parts or levels of planning. There is room for different ways of theorising. His approach to this typology enables me to agree to some extent, fundamentally, that feeds into the way that I perceive planning theory. If this approach is broadened – the Theory of Planning and the Theory in Planning, plus the different levels of theorising (from philosophy through to empirical or implementation, is hybridised in this approach.

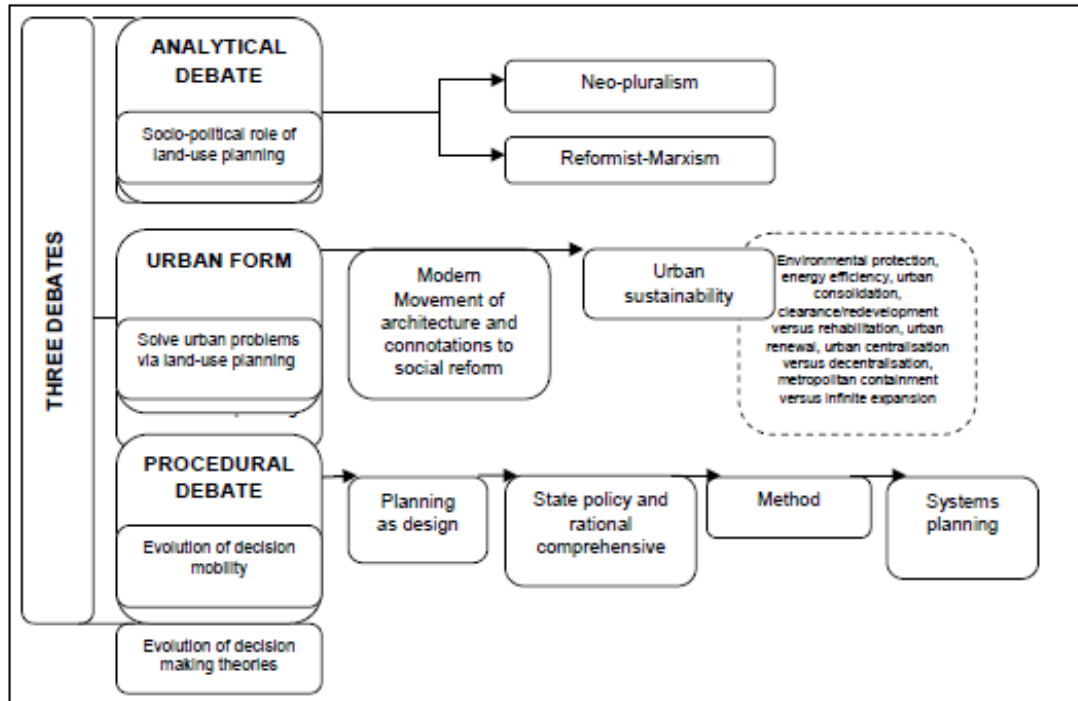


Figure 12: The three debates of urban planning and their evolutionary patterns

Source: Adaptation from Yiftachel (1989:32-35) in Combrink (2010:31)

Nigel Taylor

Nigel Taylor (1998) distinguishes among three development areas of planning thinking in relation to time in an historical overview of planning theory. He indicates three time periods as the Early Post War Planning Theory (planning as physical design), the second period as Planning Theory since the 1960s (Systems and Rational Process views of planning and planning as a political process) and then Planning Theory from the 1970s that refers to theory about the effects of planning, rational planning and implementation and theory after the emergence of the New Right. He distinguishes the development of planning theory within Modernism and Postmodernism, which is a frequently referred to as a framing mechanism. Modernism and Postmodernism are frequently referred to in planning literature. They are generally perceived as opposed to each other and criticised, mostly from the postmodern perspective. The earlier ways of thinking of planning are generally perceived negatively from the ways of thinking that developed during the late 1960s and 1970s.

Andreas Faludi

There were a few attempts to categorise planning theory into an understandable framework to make sense of the different patterns of thinking about planning within planning theory and in this thesis, theory of planning (Faludi, 1973). It might also be termed as Planning Typology or perhaps cognitive frames. The categorisation or explanation of different ways of thinking within planning theory is not accepted by all planning theorists. The first distinction has already been made in this section as the Theory of Planning and Theory in Planning (Faludi, 1973). Theory of planning, which is particularly regarded as normative and includes philosophies related to planning, focuses more on the questions of 'what planning is' and 'why do we plan'. Theories in Planning, that is substantive theory, relates to planners understanding of whatever area they are working in and how they operate, that include planning agencies (Faludi, 1973:3; Combrink, 2010:36). To arrive at planning theory – Faludi indicates the use of a pattern and deductive models. He emphasised the importance of the development of social theory on a normative level in planning, because the use of empirical facts is influenced by social values in the construction of planning frameworks (Faludi, 1973:23). He regards planning as being constructed on general concepts, but they differ in context (Faludi, 1973:36). Friedmann would indicate this division as normative planning and technical planning (Sanyal, 2018:11-13). This is a crucial 'soft' division on how to perceive the nature of planning theory.

Philip Allmendinger

Philip Allmendinger (2017) distinguishes the object of planning theory into different categories, which he expanded on through the period between 2002 and 2017 in the three editions of his book *Planning Theory*. The categories are covering the systems and rational theories of planning, critical theory and Marxism, neoliberal planning, pragmatism, planners as advocates, post-modernity, post-political, post-structuralism, collaborative planning, as well as post-colonialism and informality. The content of the categorisations is indicated below.

Table 5: The key components of the systems and rational theories of planning

Systems and rational theories of planning (p.53-79)	
Components	Expert planner, planner controls, expert knowledge, agents of norms, scientific, top-down approach, local government, apolitical, objective, contextless, complexity, change management.
Symbolic or word generalisations	Procedural Planning Theory, Positivist planning, control, prediction, natural scientific method, absolute not relative, systems planning, decision-centred.
Exemplars: problem solutions accepted by general community	Search for truth, individual and community, personal utility, systems can be modelled and predicted, modelling, quantitative analysis (Christaller & Von Thunen).
Mentioned authors in this tradition	McLoughlin (1969), Chadwick (1971), Faludi (1987).
Critique	Healey, McDougall and Thomas (1982); Taylor (1998); Thomas (1982).

Source: adapted from Philip Allmendinger (2017)

The systems and rational theories presented in this categorisation of Allmendinger are also perceived as negative, technical only, impersonal and void of context. In this thesis theories like Christaller and von Thunen are seen as ‘theories *in* planning’, being normative but rather but substantive. The work of Faludi (1987) is perceived similarly as being void of context, when his theory or rather conceptualisation of planning can be interpreted through the work of Byrne (1998) that sees planning through complexity, that is currently related to post-structuralist ideas (Allmendinger, 2017:186), just like Faludi (1987) did.

The systems and rational theories are often mostly criticised from Marxist and post-modern or post-structuralist perspectives. The criticism largely falls within the perspective that it isn't Marxism and therefore cannot be good. The fundamental criticisms stream from planners being self-proclaimed experts and professionals and taking control of society. This reflects the criticism of capitalism and the struggle between the exploitation of the proletariat or working class and the bourgeoisie, which controls production. In South Africa, it must be said that the professional planners are very much working class and not an elitist group. A professional planning degree is something that takes a great deal of work in education and in practice and does not come easy. The development of planning skills is vested in a framework that is populated by context. Contexts include much of what post-modern, post-structural and post-colonial perspectives criticise planning for. Planning inherently relies on context and adapted accordingly. Political and systemic corruption is not related to these considerations and is a separate matter.

Table 6: The key components of Marxism and Critical Theory

Critical Theory and Marxism (p.81-104)	
Components	Changes of society, Frankfurt School of thought, Marxist theory, urban areas and planning cannot be separated from society, anti-capitalism, planning seen as part of capitalism, socialism; spatial dimension to labour markets; urbanism equals capital accumulation; urban areas are centres for production and consumption of labour and goods; no apolitical planning; no procedural planning; no professional ethics or standards; public participation is a placebo; public participation convinces public that impacts and injustices of market is at bay; public participation enables capitalism; critique against closed systems; against authoritarianism and bureaucratisation; capitalism leads to growth in technology and death to authenticity; capitalism creates too many faces of reality; consumerism changes behaviour and relations to objects and people.
Symbolic or word generalisations	No public interest in planning, public control by the state, political economy approach, network power relations of capitalist society; state as collective capitalist position – structuralism; capitalism is unstable (surplus value and profit); capitalism is profit by production; capitalist accumulation; those in power are typically capitalists; city is seen as a subject of accumulation; urban areas exist because of the dynamics of capitalism; infrastructure is seen as high capital investment with little or no return; refuse collection, parks and low-cost housing brings no return with high capital investment; Capitalist society express through urban form and process; planning as an extension of the state; authority directly related to utopian society; the ‘public good’ used by professionals; planning is seen as providing control over “public good” and serves state; property capital; planning is response to capitalism; against procedural and substantive planning theory; against

	systems theory seen as contentless; systems planning seen as ahistorical and apolitical; planning disguised powerful role of the state; poverty exist because of capitalism; political economy; the Frankfurt School of Thought developed critical theory that is anti-capitalist and anti-Soviet-style socialism; Procedural Planning Theory (PPT) seen as instrumental rationality is void of historical, qualitative and context; see planning as ineffective and no actual impact on property prices, allocation of land and inequality; planning cannot enforce change; market forces determine land use planning; land use planning is only shopfront of rational, public interest decision-making that hides logic of market mechanisms; planning authority (local government) legitimizes designs and layouts of the market; the state (includes planning) regulates capitalism; the planning system itself could be biased in favour of certain interests over others; the planning system systematically privilege certain groups and interests; planning secures profitability; against agriculture industry, mining, industrial firms, property developers, all land property owners; organised community and environmental pressure groups; politicization of planning lead to critical theory attitude towards planners; general dismissive and patronising attitude towards planning.
Exemplars: Problem solutions accepted by general community	Dissenting theory of planning, critical theory, state and capitalism critique, capitalism allows individual to produce more than one needs into surplus for money (surplus labour), Urban Planning seen as mechanism complicit in state to avoid crises, expropriation of property; communication, transport and ownership holds means of production; hegemony (authority over others); capitalist production; state is bourgeoisie (ruling class); ideologies equals paradigms.

Mentioned authors in this tradition	Andrew Gamble (1999), Karl Marx, Antonio Gramsci, Richard Foglesong (1986); Hay (1999); David Harvey (1973,1989); Dear and Scott (1981); Low (1991); Theodor Adorno; Herbert Marcuse; Jean Baudrillard; Brindley, Tydin and Stoker (1996); Healey et al., 1988); Boddy (1982); John Forester (1998); Castells (1977).

Source: adapted from Philip Allmendinger (2017)

Critical theory and Marxism, as categorised by Allmendinger as a narrative in planning approaches or part of planning theory, are entrenched in their views of the anti-state, social change and anti-capitalism. In this perspective, which overlaps with some others, planning is seen as part of the capitalist system which abuses power. In this perspective, planning cannot determine the 'public good' and only profits the elite. The state is seen as the ruling class or bourgeoisie and exerts power over the working class. This view is fundamentally against planning as a profession.

Table 7: The key components of neoliberal planning

Neoliberal planning (pp.105-126)	
Components	Free-market 'roll-back' neo-liberalism; personal and political freedom; inequality (welfare and state intervention) driving force of market; complex society cannot be coordinated by a plan, but through free and competitive markets; knowledge through society; government to have limited role; state uphold rule of law and handle disputes; owners should be free to develop their property as they see fit; division of the right to control.
Symbolic or word generalisations	New modes of socioeconomic regulation; role of state is minimalist 'nightwatchman' or facilitating markets; 'theory-practice gap' how policy is translated and implemented; both deregulatory 'roll back' of planning powers and 'roll out' and expansion of planning"; planning is a means towards an end; reorientation of state to sustain growth in global economy; challenges the notion of planning; critical towards land use planning; central to market; markets superior way of organising societies; central planning is dangerous and inefficient; interferes with

	market; reduces personal freedom; vagueness of 'social welfare'; planning should only be undertaken on local level; national or regional planning does not have a direct relation to 'neighbourhood effects'; 'rule of law' essential to system of intervention to minimise bureaucratic interference and discretion; context important; bureaucrats seen as threat; planning and intervention is the new 'norm' in society; Public Choice Theory (PCT) consist of three mainstreams; PCT methods of economic analysis and political activity and bureaucrats provides that public agents or public bodies are neutral and disinterested; assume individuals are rational, self-interested actors and shape politician or bureaucrat; impossible to have individual preferences into a 'common good'; planning is seen as a way to gain political power; planning seen as redistributing wealth from poor to middle classes; neoliberalism can be seen as hostile towards the state and intervention in markets related to planning; market mechanism should allocate land uses; abandon rigid zoning policy; eliminate planning restrictions; no more structure plans; proposes different degrees of control to different spatial requirements; planners seen as part of bureaucracy class; deregulation; look at alternatives for planning itself; free-market; variable and experimental approach; regulatory 'burden'; new public management; focus from territorial governance to real estate markets; need new flexible planning approach; move purpose of planning to a market-supportive role.
Exemplars: Problem solutions accepted by general community	Planning plays minimalist role correcting market failures; planning is pragmatic and facilitates markets and economic growth through creating certainty; social housing; education facilities; public transport; public policy; anti-planning conservatism revitalised in increasing authority of neoliberalism; individual freedom to make own choices will maximise the public good; politicians cannot determine long term public good; individual liberty; should limit politicians and bureaucrats; market principles are best basis for decision-making; Public choice; some form of land use control can be directed to assist market; Planning policy seen as ill-conceived and poorly administered; planning regulations not

	flexible enough; propose major structural reform to replace entire planning system with land use tribunals; let go of detailed planning controls and permissions and replace with private arrangements; simplify planning system and remove unnecessary restriction; simplify planning procedures and administration; controls only for regulation of safety, public health, pollution and nuisance control; move away from public participation to limited group for input and more defined criteria and market reliance; successful designs determined by market through price and supply and demand; use and control of land should be shifted away from planning system into market and legal arena; Centralisation with a centrally directed approach with no local discretion; minimal regulation; planning seen as regulating demand; roll-out neoliberalism seen as pragmatic; “roll-back”, “roll-out” and “roll-with-it neoliberalism”; ‘what works’ approach; locally specific; empirically led understanding; assessment “on the ground”; market-based reform; stronger emphasis on development management rather than development regulation; detached from politics and the political; planners are experts (negative); not objective; public participation process only effective if system and process is impartial and unbiased; political process managed by planners and politicians to establish growth; power is not found in government, rather in supply and demand and operation of markets; post political city; neoliberal governmentality includes self-governance; power is located in interactions of supply and demand and operation of markets; planners are ‘agents of norms’ that inform the scope of what is possible and what is not in terms of process and outcomes; Foucault’s focus on self-government; reinvent planning.
Mentioned authors in this tradition	McGuirk (2005); Andersen and Ploger (2007); Purcell (2009); Fukuyama (1989); Swyngedouw (2007); Marsh and Rhodes (1992); Smith, Burke, Mill, de Tocqueville; Milton Friedman; Friedrich von Hayek; Gamble (1988); Kavanagh (1987); Thornley (1993); Sorensen and Day (1981); Lai (1999); Pennington (2000); Gamble (1988); King (1987); Arrow (1951); Downs (1957); Tullock (1978); Buchanan (1975); Poulton

	(1991); Pennington (2000); Alan Evans; Anthony Sorenson; Martin Auster; Jones (1982); Siegan (1972); West (1974); Pearce (1978); (Pennance (1974); Jacobs (1961); Anthony Steen (1981); Jones (1982); Thornley (1993); Kristol (1978); Polanyi (1944); Peck (2010); Swyngedouw (2011); Lefebvre; Michel Foucault.
Critique	Anti-planning; Faludi (1973); Cherry (1988); Lai (1999).

Source: adapted from Philip Allmendinger (2017)

The neo-liberal narrative or approach to planning itself has certain traits of the Marxist and Critical Theory approaches and principles. The state should have limited interference with planning and development. Land use planning is perceived as controlling and inhibiting as well as meddling in the land markets. People should be able to do as they please with their properties and the state should only resolve disputes. Planning and the state cannot determine the public good. In South Africa, the planning system has progressed with internalising principles of social justice and addressing inequality. The structure and framework of the system do allow for bottom-up planning, in which context plays a central role. In this framework, the local community plays a central role. The local government are the bodies of first instance⁴, which means that land use and development decisions are processed and decisions for development and land use planning are made at a local level, not a national or provincial level. The cooperative government structure allows for a governance structure that allows for the spheres of government to have sovereignty, while working together. The South African governance system places emphasis on local governance and development. This is clearly demonstrated in the requirement from the Constitution that all areas of the Country should be covered by a local municipality. The purpose of this is for the function of providing basic service delivery to all. The development of land use schemes is also wall-to-wall and all inclusive. (Please see Chapter 3 of this thesis for a discussion on the land use schemes and its development.) This means that land use schemes are all-inclusive and

⁴ See SPLUMA (Section 33[1]), the development principles in section 7 of SPLUMA as well as the decision-making structure and process in the Municipal Planning Tribunals (MPTs) in Sections 2-13. Section 19 requires a working relationship with the traditional authorities, which are regarded as previously disadvantaged areas.

consequently the relevant definitions should be adapted and developed within context. This should address many of the concerns from a neo-liberal perspective. There are still issues that will not be satisfied because of expensive application fees, expensive administration costs and informal land ownership issues.

Table 8: The key components of pragmatism

Pragmatism (pp.127-145)	
Components	Have an incremental and pragmatic view of world; intellectual practical approach; 'doing and making'; critical intelligence to concrete problems; truth as outcome of an idea; act on instincts; intuition; outside 'truth' cannot resolve problems; open-ended; liberalism; concerned with individual and freedom; scientific approach or methodology most appropriate way of open-ended search for truth; communication and discourse; planner as mediator; liberal democracy; liberal principles; pluralistic society; middle-range planning; incrementalism; advocacy planning; transactive planning; radical planning; shared inquiry and common purpose; intersubjective communication; communication diminishes power; planners must identify with the inadequate powers of the weak, colleagues, neighbours and citizens rather than professional expertise; challenge problems through communication; democratic process; critical theory; irony; power inequality; decision-making should be based on choice and policies; no particular goal or vision in addressing problems; incremental decision-making; limited analysis; empirical analysis; focus addressing problem rather than reaching a goal; trial and error; options and alternatives; consensus; pragmatism provides ironic view on themselves related to planning itself; critical mechanisms related to reflection on role of planners; planning as evolving activity; planning not to determine reality, but to serve a practical purpose in the understanding of it; pragmatism relates to practice of planning including micro-politics of practice; turn away from abstract theorising and turn to practice; ethical deliberation needed from choices in

	practice; planning perspective embedded in liberalism with strong relation to ethics; human action more important than abstract thinking in realism, Marxism and idealism; pragmatic rejection of foundational thought; critical understanding of power distortion is needed; postmodern or pragmatist need to recognise difference versus the modern need for consensus; consists of foundational and non-foundational thought is common in postmodern thinking; concerned with acting in real world; anti-theory but is very theoretical; what is practical in face of power inequality; function within a liberal-democratic framework.
Symbolic or word generalizations	Highly practical approaches to planning; largely originated in USA; 'common sense'; some links to postmodern thinking; rejects meta-narratives or foundational truth; post-Marxist thinking present; inclusive action; void of priori theorising; theories become expressions of beliefs; criticism and reflection; liberalism provides political and societal framework; scientific method allows democracy and liberalism to address needs and desires; planners initiating and championing change; no fixed principles; planning as privileged moral and scientific practice for public interest; against professions; professions and scientific and 'objective' knowledge seen as strongholds of power; planning only reproduces inequality; practical and common sense above technical-based knowledge; do not accept systems of rational planning.
Exemplars: Problem solutions accepted by general community	Direct action to specific problems; context specific action; 'getting things done'; 'what counts is what works'; producing visible results; dismissive of abstract theorising; incremental approach neglects inequality and powerful relations in society; look at individual and social structuring influences or biases; experience over theory; approach vested in socially shared and democratic means; find best solutions by competing ideas.

Mentioned authors in this tradition	Richard Rorty; Rosenfeld (1998); John Dewey, Charles Peirce; William James; Festenstein (1997); Charles Hoch (1984, 1996, 2002); Meyerson; Charles Lindblom (1959; 1977); Davidoff; Friedman, Grabow and Heskins; Foucault; Habermas; John Forester (1989); Patsy Healey; Teitz (1996); Harper and Stein (1995); Liggett (1996); Watson (1998); Jean Hillier (1995); Colman (1993); Harrison (1998).
Critique	Blind to deeper forces and structuring influences in society; opposite of political economy approach; isolation from purpose and value; planners are blind operators of the system; Healey, McDougall and Thomas (1982); power blindness; cross between post-modernism and collaborative planning; bias; professionals exist, because they have expert and specialised knowledge; individuals and planners are employed by bureaucracy; does not significantly improve planning practice; normative and prescriptive; Hoch (1984); pragmatic dependence on experience in an assumed homogeneous environment makes the identification of problems difficult; the boundaries and limitations of a problem is known, but not much of the problem itself; no guide for transactive dialogue; injustice not evaluated; no scale or direction provided for incremental planning; pragmatism assumes a natural predisposition that instrumental enquiry can solve problems that might expose deep divisions in society based on gender, class or race; pragmatism is power blind; may contribute to social problems rather than solve them; public participation championed by professional planners; incremental conservatism; justification for socialism (by interventionist society); little prescription as to how a society could work.

Source: adapted from Philip Allmendinger (2017)

Pragmatism in planning as a perspective or principle aims at getting things done and the deeper theorising and thinking about problems are not necessary. Planning should simply address the context. This view also contains opinions that perceive planning as

being controlling and tends more to an approach which does not control development. Though it aims to be practical, it is inherently normative. Planning is seen as working for the bureaucratic state, being biased. Planning is perceived as being privileged and scientific, when planners should champion change. The planning profession is seen as containing strongholds of power. Planning in South Africa does not hold the power of being an elite. The government provides a legislative framework, which is based on and in line with the Constitution of 1996. (Please see Chapter 3 for a discussion of the planning legislative framework.) The requirements for the development of Spatial Development Frameworks (SDFs) and the development of Land Use Schemes (LUS), the two key planning tools mandated in the planning system in South Africa, consist of a wide range of contextual information as administered at a local level. It is possible to determine the needs and vision of the local community and capture this within the local context in the key planning tools in the democratic cooperative governance system. The decision-making power is in the hands of the local authority, not the planning profession. This power itself is also limited as democratic systems and frameworks are legislated into the planning framework of this country.

Table 9: The key components of advocacy planning

Planners as advocates (pp.146-167)	
Components	Political view of planning; advocacy planning could emerge through informal voluntary organisations; resolve conflict through legal advocacy and democratic politics.
Symbolic or word generalization	Planning should not be apolitical, technical or bureaucratic; criticism of rational and systems view of planning; negative attitude towards state; state seen as controlling development; the systems and rational approaches to planning is seen as technical and not being democratic; criticism of rational and systems view of planning in that the planners are seen as professionals at the centre of the societal universe controlling everything and born from the Enlightenment and modernity; planners as trained professionals act in the 'public good', but dismissive of context; planners seen as arrogant; planning as bureaucratic evangelism; planning seen as high-handed, centralised and arrogant;

	questions the role of the planner; ‘What are you planning?’; argues that planning is not objective; planning as technical reality; planning seen as a highly political process; planners seen as working within instrumental rationality; legal system could provide the correct answer to issues raised in conflict; planning is not a profession or a discipline, because it does not have an endogenous body of theory; a profession such as planning claims to control a specific area of knowledge or expertise, can solve problems within existing economic and social structures and serves the best interest of the public; questions all professions (why should any discipline be a profession?); symbolic relationship between professions and the state; planning limited to state predetermined parameters, compliance of profession and the policy implementation; planners gain status, power, money and employment security by being professionals; anti-regimes; hyper-pluralism that seeks to promote one agenda over others; certain rules in planning favours certain groups and interests; planning application perceived as techno-rational; planning is seen as a political activity with many value judgements; those who owns the most property has most influence in planning decisions and law.
Exemplars of problem solutions accepted by general community	Comprehensive social planning; idea of non-neutrality in assessment of plans; planners as confronters of alternative plans; political parties within an area, should establish community plans that are guided by their own values; involve interest groups, chambers of commerce, unions and more; operates on ‘grass-roots level’; how to judge among competing plans; planners to provide services to under-represented groups to achieve inclusive pluralism; pluralist model; pluralist model allows power to be decentralised and fragmented; all groups have access to some resources; possession of resources as important as ability to use it.
Mentioned authors in this tradition	Paul Davidoff (1930-84); Norman Dennis (1972); Jon Gower Davies (1972); Bent Flyvbjerg; Thomas Reiner (1962); Checkoway (1994); Marris (1994); Piven (1970); planners act on behalf of the poor, let people believe an illusion; exposing power not strongly enough to

	address problems; (Reade (1987); Bob Evans (1993,1995); Evans and Rydin (1997); Mazziotti (1982); Jordan (1990); Healey, McNamara, Elson and Doak (1988); Brindley, Rydin and Stoker (1996); Thomas (1992); John Forester (1989); Norman Krumholz (1990).
Critique	Who will pay for advocacy planners? Too ideological; lacking in technical analysis.

Source: adapted from Philip Allmendinger (2017)

Planners as advocates are invested with the need to stand up for the least privileged or rather underprivileged citizens. It distrusts the purpose of the planning profession and claims that planning aims to control and determine the public interest with cold science and rationality. Planning is seen as power, status and the assumed owner of knowledge and expertise. It has a very negative connotation to planning as a profession, almost cynical. This view also sees planning as a tool of the state to control settlements and living areas of communities, with favouritism shown towards certain groups. They call for planning operations from a 'grassroots' level. In South Africa, planning in its legal and institutional framework, is vested in the local government or municipalities. It is decentralised and does not function from the top down. All contexts are informed at a local level, without explicit instructions from the national or provincial spheres of government. The provincial government has a mandate to help and facilitate the processes and development, particularly to fulfil the mandate that the local government has. Central to this is decision-making on a local level, through locally informed processes. The goal of planning and development is captured in the developmental principles within SPLUMA, which are clearly focused on inclusivity and the importance of local context. Please see Chapter 3 for the legislative importance of local government and planning.

2.4.2.1.4 The larger patterns present within debates on planning theory

Certain theorists indicate planning thought 'shifts' (paradigm shifts or different narratives) and others are of the opinion that there are no different paradigms in planning theory. The different narratives about planning developed over time and could be argued as being different streams of thought in planning theory. There are theorists who argue that

planning theory moves and develops in older ways of thinking and then diminishes. Then it could also be argued that planning has certain constants that constitute planning, in that what makes it planning. The South African planning system distinctly identifies key components that form the framework of the system as a mechanism to absorb local context. Planning theory narratives are useful to understand criticism of planning, which could be used to improve the planning system.

There are different strands or narratives within planning theory (Beauregard, 2020:12) or perhaps different ways of thinking about planning (Combrink, 2010) that form identifiable patterns. Some of these narratives function within a high level of abstraction (Watson, 2016:32). Watson (2016:32) argues that planning theory changed over time as a response to changes in social and philosophical variations, as well as changes within the world as it progressed. Different identified narratives within planning are at times identified as the rational comprehensive way of planning, procedural planning, systems planning, advocacy planning, radical planning, political economy, liberal planning, equity planning, social learning, communicative planning, planning in uncertainty, post-colonial planning and informality (Healy et al., 1982; Shönwandt, 2008; Taylor, 1998; Yifithachel, 1989; Allmendinger, 2002, 2017; & Combrink, 2010). These different narratives on planning could be denoted in different names within different contexts. (See section 2.4.2.1.1.2 on the different mentioned typologies in planning.)

The figure below indicates the approximate timelines of development of the different narratives in planning that do overlap at times (Combrink, 2010:42). (See section 2.4.2.1.5 for a further discussion of each narrative.) The most dominant narratives are indicated in red within the figure and are mentioned as Traditional Planning, the Rational Comprehensive way of planning, Social Learning and Communicative Planning (Combrink, 2010:42) as well as post-colonial narratives and informality. The communicative and collaborative planning theories and inherent debates have been the larger part and dominant way of thinking of planning theory since the 1980s (Watson, 2016).

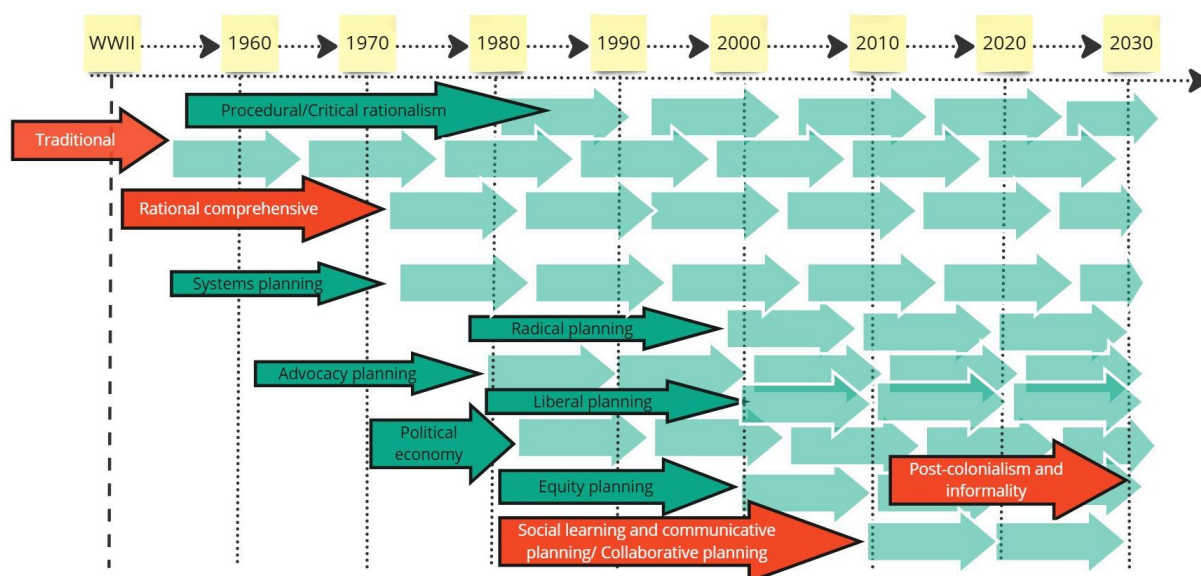


Figure 13: The development of different ways of thinking about planning, according to the body of Planning Theory (adapted and updated from Combrink, 2010:42 with Allmendinger, 2017)

Considering the body of narratives in planning, it proposes four streams of mainstream planning theory narratives current since the 1940s. They are regarded as traditional planning (civic design), procedural planning theory and the practice movement. Traditional planning as per the pre-World War II planning narratives include Experiential Holism (1900-1935) and Scientific Conjuncture (1935-1950). The post-World War II narratives developed the Rational Comprehensive Planning (synoptic planning), Systems Planning and Procedural Planning (rational process planning; critical rationalism). The Practice movement overlapped with some of the Rational planning perspectives and developed from the mid-1950s. It included the Liberal Political-Science Critique, the Radical-Liberal Critique (advocacy planning), New Humanism (transactive planning), Equity Planning, Communicative Planning, The Neo-Marxist and Political Economy perspective, the Radical Perspective, the Libertarian/Liberal Planning and Planning in Uncertainty. It is worth mentioning that the Communicative Planning theory has three streams of thinking. They are called the 'Communicative turn' as influenced by Habermas' Communicative theory and best represented by John Forester, the 'Institutional turn' that is best represented by Patsy Healey and the 'Foucauldian perspective' that is best represented by Flyvbjerg, Fischler and Vanessa Watson (Combrink, 2011:46-64). Planning theory during the 1980s seemed to produce numerous

different planning narratives, which included neoliberal and public choice perspectives, neo-pragmatism, postmodern planning, political economy approaches and communicative planning theories (Watson, 2016: 33; Sanyal, 2018). Watson states that this trend of developing many ways of thinking about planning persisted with theories that drew on social science in terms of complexity, actor-network theory, power, feminism, race and identity political thought, new institutionalism, post-political thought (Watson, 2016:33). During the period since 2010 narratives prevailed that rely strongly on the post-colonial trend, as well as narratives focused on informality (Allmendinger, 2017: 272,281). It is useful to understand the different planning narratives to understand the different focuses of planning and the different ways of seeing planning, though a significant body of these narratives are mostly criticism to planning.

2.4.2.1.5 Positivism, Rationalism and Post-Structuralism within Modernism and Post-Modernism

Thomas Kuhn's *Structure of Scientific Revolutions* (1970), in which the idea of different paradigms and shifts in the philosophy of science are discussed, was and is seen as the foundation to post-positivist approaches to social theory, according to Allmendinger (2002, 2017). The idea of paradigms has been taken up by planning theorists like Faludi and Alexander, and paradigmatic development has been broadly accepted as encouraging new directions in social planning and planning theory (Allmendinger, 2002). Healey argues that every field has its own history of ideas and practices and its traditions of debate. Supposedly this is the accumulation of experience, assumptions, metaphors and arguments on which contributors could draw in the development of their field, either through what they do or through reflecting on their fields (Allmendinger, 2002). Kuhn (1970) sought to locate scientific activity within social and historical contexts which are dominated by paradigms of accepted knowledge (Allmendinger, 2002). These are regarded as narratives with inherent patterns for purposes of this thesis.

The different narratives within planning theory as discussed in section 2.4.2.1.4 above, as it developed over time, conform to patterns that are distinguishable within different larger categories as mentioned in sections 2.4.2.1.3 (which discuss the typologies in planning narratives as well as Section 2.4.5.1.4). These narratives within the body of Planning Theory could be grouped into three philosophical natures, namely Positivism,

Rationalism and Post-structuralism when the structures as indicated by Healy et al. (1982), Shönwandt (2008), Taylor (1998) and Yifthachel (1989) and Allmendinger (2002, 2017) are combined (see Figure below) within the time of development of Traditional Planning, Post-World War II views of Planning and the Practice movement. The latter is largely associated with the Post-Modern planning narratives, as per the construction of the mentioned sources. These planning narratives could be grouped into two philosophical groups that relate to Epistemology and Ethics (Taylor, 1980).

Positivists

Positivism in planning literature is regarded as being directly associated with traditional planning (Sandercock, 1998: 26-27). The positivists are associated with Popperian perspectives which are said to emphasise rigorous scientific methods in the search for truth (Allmendinger, 2002). Sandercock (1998:26) indicates that planning's positivist philosophy as per Perloff (1957) seems to be rooted in the philosophy of Auguste Comte and had transcended barriers to aspire to the work of Karl Popper (1975). Sandercock criticises this philosophical approach called the 'planning process' as 'detached intellect', which investigates passive objects, without knowing the subject (Sandercock, 1998:26). Sandercock, as a stern critique of planning itself, deems positivism and planning as being modernist (Sandercock, 1998:26). Planning is directly related to positive (positivist) science that includes the comprehensive planning processes as written into legislation (Sandercock, 1998:27, 205). This indicates that she does not condone planning legislation or its systems or processes. Sandercock argues that planning cannot know the 'public interest' and decontextualises cities and dehumanises them in their modernist project (Sandercock, 1998:28), writing from a foundation of feminist and Marxist narrative. Sandercock further indicates that feminist epistemology was developed in reaction to positivism, as an expression of criticism (Sandercock, 1998:68).

Experiential Holism, as part of the positivist tradition, can also be translated as rationality in the public interest as indicated by Weaver, Jessop and Das (1985). It relies on empiricism and pragmatism with a focus on the personal learning or knowledge of a planning context (Combrink, 2010:44).

Scientific conjuncture, that also forms part of the positivist tradition, includes decision-making as being scientific. This relates to early theorists like Tugwell and Mannheim,

drawing on pragmatism, the German Historical School and institutional economics (Weaver, Jessop & Das, 1985; Combrink, 2010:44). This supports the view that the planning authority should base decisions on empirical investigation and a scientific study as a sociological experiment (Mannheim, 1940:266; Combrink, 2010:45).

Post World War II thinking adopted a tendency towards Rationalism, whilst still being connected to Positivism.

Rationalism

Rationalism, that was prevalent in planning during the period after World War II, effectuated planning patterns or narratives mentioned as 'Rational Comprehensive', 'Systems planning' and '*Procedural planning*' (Sandercock, 1998:87; Meyerson and Banfield, 1955; Taylor, 1998:59-74; Archibugi, 2008:74). However, this patterned narrative is also related to Traditional Planning (Taylor, 1998: 50; Hudson, 1979: 388; Combrink, 2010:47). These planning narratives developed mostly during the twenty years following World War II (Sandercock, 1998). Archibugi (2008:39) recalls that Myrdal (1960) spoke at an American Institute of Planners' Conference during 1968 and mentioned that the planning profession should be proud of their rational and predictive capabilities. In planning literature after the 1970s or 80s largely uses the word 'rational' as a critical observation rather than as a description of a part or component of a process. In Jean Hillier's and Patsy Healey's (2008) three-volume collection of planning theory contributions, they group together the following authors under the rational scientific management approach to planning: Davidoff and Reiner (1973). Lindblom (1973), McLoughlin (1969), Faludi (1973), Davidoff (1965), Dyckman (1966), Dyckman (1966), Arnstein (1969), Barrett and Fudge (1981), Friend and Hickling (1987), and Ward (2003). Hillier and Healey (2008:299), critically relate these authors to planning as a process of societal management.

Rational Comprehensive planning relates to the multi-planning agencies within traditional planning and the rational process of planning and the planning model of decision-making (Taylor, 1998:112; Faludi, 1973: 207-223; Combrink, 2010:47).

Systems Planning as presented by McLoughlin (1969) in "*Urban and Regional Planning: A systems approach*" (Taylor, 1998:59) represents the guidance of change in complex

systems as an approach to planning. The systems view of planning includes the consideration of all systems and processes within the planning practice environment and human settlement as a framework (McLoughlin, 1969:297). In this McLoughlin (1969:305) distinctly mentions the social complexity of context and criticises *generalists*. McLoughlin indicates that *planning generalists* enter the planning profession via other professions in criticising planning from their educational backgrounds (McLoughlin, 1969:305-306). Generalists here are seen as comprehensive planners who “know less and less about more and more until they know nothing about everything”, because the system was not properly defined (McLoughlin, 1969:306). According to McLoughlin (1969:307) the chartered town planner has a “skill and command of the planning process as a whole in order to co-ordinate all planning operations” and also to manage the control and design of the implementation of the policy or plan. Together with this, the chartered town planner manages the essential contributions of the persons or professionals from other disciplines that are involved in the planning process (McLoughlin, 1969:307).

Procedural planning relates to the process or procedures within planning practice of which the rational process inherently forms a part of the substantive process (Taylor, 1998:66). Procedural planning theory relates to planning methodology with the influence of critical rationalism from Karl Popper (Faludi, 1986:3). Procedural planning theory is not based on positivism and is regarded as normative (Faludi, 1986:3-4), though other authors describe it as positivist (Faludi 1986:4, 124, Taylor, 1980 & Hooper, 1982). Critical rationalism includes the ‘strategic choice approach’ as per the IOR School (Faludi, 1986:120). It refers to planning as decision making within the ambit of strategic choice (Faludi, 1986:115).

The narratives associated with post-structuralism, which are mentioned as the practice movement at times, are associated with post-modernism.

Post-structuralism

Post-structuralism refers to a narrative that is philosophical and sociological and holds views that form a network of interrelated thoughts and influences, which does not necessarily form a coherent whole (Boonstra & Rauws, 2021:308). Planning theorists within this narrative refer to mostly French scholars who include Michel Foucault, Bruna Latour, Jacques Derrida and Gilles Deleuze (Boonstra & Rauws, 2021:308). Theories of

complexity also relate to this narrative (Boonstra & Rauws, 2021:308). Post-structuralism is concerned with understanding and deconstructing the processes involved and is not particularly concerned with reality. It is vested in self-organisation (Boonstra & Rauws, 2021:309). Allmendinger (2002) indicates that practitioners of Post-Structuralism seek to ‘expose’ the role of power and its influence on social control. Post-structuralist narratives within planning theory include narratives of advocacy planning (radical liberal critique), transactive planning (new humanism), liberal planning, liberal political science critique, equity planning, communicative planning, radical planning, post-colonialism and informality. See the Figure below.

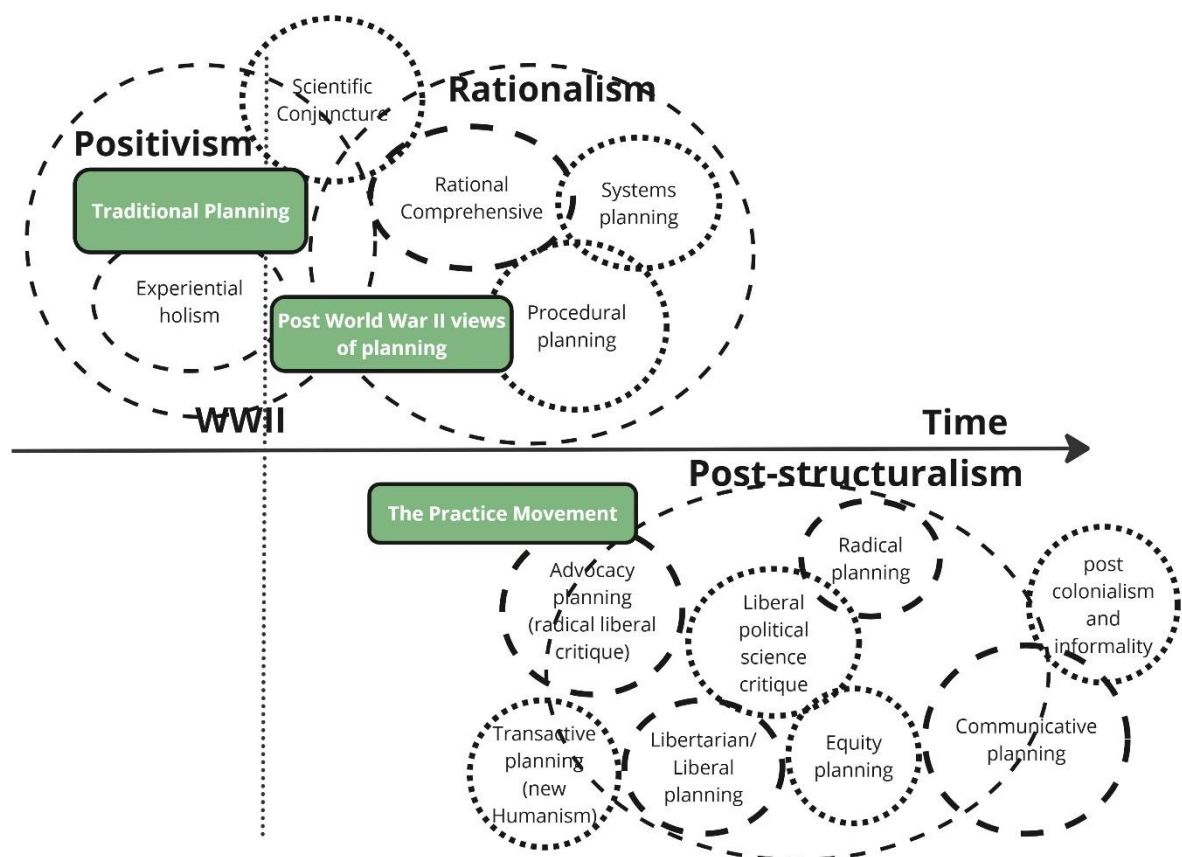


Figure 14: Integration of posed frameworks from Healey et al. (1982), Shönwandt (2008), Taylor (1998), Weaver et al. (1985), Yiftachel (1989) and Allmendinger (2002, 2017)

Advocacy planning

Nigel Taylor (1998: 83-90) discusses the fact that planning should not just be technical and a process. He then discusses public participation when it comes to influencing decision-making in planning as part of the government process. It is stated that the British government required public participation. In Britain, strategic structure plans were prepared by local planning authorities but were approved by the Minister in Central Government (Taylor, 1998:87). Opportunities were granted by the local community for comment (Taylor, 1998: 87). A similar system has been legislated in Tanzania, where the planning applications are processed by the local authority, but the Minister from the central government needs to approve the applications. In South Africa, public participation plays an important role. Together with this, the South African Planning system requires planning and decision-making within local government, neither central nor national, or provincial government. Taylor (1998:88-89) further discusses Sherry Arnstein (1969) and her well-known journal article "A ladder of citizen participation" which criticises public participation processes. Arnstein studied physical education and practised as a social worker and had a career in health. She was assigned to help communities develop quality of life programmes aimed at improving job opportunities. It is said that she contributed to the medical and public policy under-represented racial minorities and civil equality advocating fields in the United States of America (American Association of Colleges of Osteopathic Medicine, 2024). Sandercock (1998:89-91) discusses the Advocacy model of planning and includes Arnstein (1969) as a key source of literature for this, and mentions that her husband, John Friedmann (Friedmann, 1973) also relied on the work of Arnstein to improve social learning. Sandercock includes the idea of equity planning. The South African Planning system is embedded in a democratic system, which is rooted in the Constitution of 1996. Public participation, as is indicated by planning literature, forms a crucial part of the South African planning system. It is legislated within the planning process and underwent significant structural changes within the last 30 years (see Chapters 4 and 5 of this thesis for the legislative planning framework and the implementation thereof). This having been said, it is clear that advocacy planning is strongly related to public participation, which is a consistent, continuous and key component of the South African planning system and its processes, but it is not planning in and of itself.

Transactive planning

Sandercock (1998:95) introduces transactive planning as a development in planning theory by John Friedmann (1973) in his book *Retracking America: A theory of transactive planning* as part of social learning and communicative action. Friedmann focused on the post-industrial society and the conflict of expert knowledge and personal knowledge (Sandercock, 1998:95). Transactive planning relates to the development of the personal relationship between the client and the expert in a process of mutual learning (Sandercock, 1998:95). Friedmann discusses planning as a social process (Friedmann, 1973:5-8). It focuses on the polarity between the two in terms of knowledge and the fact that neither has the answers. Its focus is on dialogue or communication between the two poles and the emphasis on human worth and interpersonal exchange that includes the moral judgement, empathy, feeling and reading of verbal and non-verbal communication (Sandercock, 1998:95). It takes a negative view of planners, in which view professional planners are regarded as traditionally arrogant and aloof (Sandercock, 1998:95). Friedmann's views were significantly influenced by the Chicago Planning School in the tradition of Edward Banfield, Rexford Tugwell and Harvey Perloff, or a reaction to his experience (Friedmann, 1973:2-4). Friedmann was concerned about the focus on mostly land use planning and not regional planning which includes an economic plan (Friedmann, 1973:4-5). He was further influenced by his experiences in practice in Tennessee as related to the bureaucratic system in which the responsible officials had to manage a budget from Washington (National Government) to better a backward region that had to fight to exist (Friedmann, 1973:5). Friedmann's vision, to bridge the gap in communication, is found in transactive planning that would change knowledge into action through interpersonal relations (Friedmann, 1973:171). Friedmann, in a later recollection of his work and that of others (2011:11), mentioned that though he was critical of planning, he regarded it as a valid vocation, and he argued as to why planning should not be abandoned.

Table 10: Friedmans argument for planning

Why the idea that planning should not be abandoned (Friedmann, 2011:11)?	
	It is involved with important public issues
	It is focused on obtaining results in the “real world”, which needs political strategies
	It is collaborative, communicative and transactive
	It pursues a balance between the normative and the technical; the utopian and the pragmatic; the part and the whole and more
	It allows vision with values that consider social justice, civic enabling, social unity, environmental sustainability and the promotion of human thriving
	It is transdisciplinary and operates on many different scales that includes national, global areas and local neighbourhoods, backed by their political powers
	It employs constant social learning

Source: Friedmann, 2011:11

Liberal planning

Liberal planning includes a variety of political economy and economic theories (Shönwandt, 2008:16; Combrink, 2010:63). There are two distinctive streams within the focus of liberal planning. Libertarian liberals focus on negative rights, which are related to rights against oppression. The egalitarian liberals are focused on positive and negative rights (Moroni, 2004:165; Combrink, 2010:64). The state plays a neutral role in the idea of the public good itself (Moroni, 2004: 156).

Liberal Political Science

The Liberal Political Science Critique narrative served/(s) as a model of political society and is regarded as an anti-planning model (Weaver et al., 1985:158). Weaver et al. (1985:158) indicate the following authors within the confines of this narrative: Meyerson and Banfield (1955), Lindblom (1959, 1965), Banfield (1959, 1970), Altschuler (1965, 1965) and Rabinovitz (1969, 1973). This narrative includes Incremental planning that is

well represented by Charles Lindblom. Lindblom (1959) discusses two ways of formulating policy to indicate the importance of choice and the limitations of analysis in the given system of government administrators (Lindblom, 1959:151-153). He calls for a wider choice of inclusion in the choice of policies to be included in decision-making and not just be guided by what is prescribed (Lindblom, 1959).

Equity planning

Equity planning is credited to the work of Norman Krumholz as chief planner from Cleveland during the 1970s and Robert Mier as the Head of Economic Development Planning in Chicago (Sandercock, 1998: 93). Krumholz focuses on political economy questions about who is getting what from local urban plans and policies (Sandercock, 1998:93). Mier advanced the view of the administrative process as being inclusive in relating to gender and race (Sandercock, 1998:94). Krumholz and Clavel (1994:1), in their book *Reinventing cities: Equity planners tell their stories*, viz. that equity planning means "...a conscious attempt to devise redistributive policies in favour of the least powerful and to enhance the avenues of participation". Equity planning further rejects the notion of the technical role of the planner and maintains that it should first be concerned with the truly disadvantaged. It is inherently against a democratic institution, which is seen as biased (Krumholz & Clavel, 1994:3). Planners are deemed as holding the authority to make public participation happen. Equity planning also manages issues of managing diversity and race and the distribution of resources (Krumholz & Clavel, 1994:3). Krumholz and Clavel (1994) include several interviews with what he deemed as equity planners within different cities across the United States of America. The roles of the equity planners and their efforts are discussed, as they function within the US planning system. Krumholz and Clavel (1994) call for inclusion and for rules to regulate planning schools in composition and pushing for race to be at the forefront of discussions; planning should take the lead in the distribution of wealth, income and municipal services; professional schools should be placed directly under the influence of equity planners in practice; equity planners need to make their position known; equity planners need to become part of national organisations, planning board members and more; the methodological side of equity planning should be enhanced in professional planning schools; and promote political economy (Krumholz & Clavel, 1994:238-240).

Radical planning

Radical planning is linked to critical discourses that relate to social transformation (Sandercock, 1994:97). *Critical* in this sense refers to critical theory as part of Marxism. It includes theorists from advocacy planning, feminism, racism struggles, oppression and exploitation and social reform (Sandercock, 1998:97). Radical planning is concerned with the unequal distribution of resources and power with the aim to work towards structural transformation and empower those who had been disempowered or poor (Sandercock, 1998:97). This means a fundamental change in the purpose and epistemology of planning itself (Sandercock, 1998:99). In essence radical planning ambition is beyond the scope of urban and regional planning itself and sides more with governance. Some of its principles are included within the South African Planning system as developmental principles as per SPLUMA, the structural changes as discussed in Chapter 4 (although the governance structures would most likely also be criticised from this viewpoint).

Communicative planning

Communicative planning, also known, amongst other terms, as Communicative Action, frequently refers to the work of Habermas, Foucault and Rawls (Taylor, 1998: 123; Sandercock, 2004; Sandercock, 1998:95). Nigel Taylor credits John Friedmann with action-orientated planning that relates to a process of communication and negotiation (Taylor, 1998:122). Sandercock (1998:94) refers to Paul Davidoff entering the political process as an advocacy planner in which planners take their skills to poor communities to assist them with alternative plans. Sandercock also mentions her husband, John Friedmann's work done in *Retracting America* (1973) within communicative planning, as overlapping with transactive planning (Sandercock, 1998:95). Taylor indicates that it was the work of Pressman and Wildavsky that was related to implementation and that of John Friedmann's work on action-oriented planning that emphasised the necessity of communication and deliberation for the application of policies and plans (Taylor, 1998:122). The work of Tore Sager (1994), Judith Innes (1995), Patsy Healey, John Forester (1993), Bent Flyvbjerg and Fishler, as well as Vanessa Watson (2008) is also noted in communicative planning (Taylor, 1998:122).

Post-colonialism

Sandercock (1998:16-18) writes about the age of postcolonialism as a global movement of people living on previously colonised land and the struggles that came along with it. She indicates that the colonial powers established land-use planning, laws of private property and land use management. She specifically refers to the United States of America and Australia. She is of the opinion that the foundation of planning, perceived as modernist, should be replaced (Sandercock, 1998:18).

Informality

Ananya Roy (2016) holds the view that there are two views of urban informality. The one view as portrayed by Mike Davis (2006), regards informality in urban areas as over-urbanisation and an indication of a lack of growth. Davis interprets the informal settlements as a “planet of slums” generated by the world system. The second view on the informal urban areas celebrates the informality (Roy, 2016). Roy identifies the work of Hernando de Soto (1989, 2000) as foundational work in this context. De Soto’s work envisions the ‘people’s economy’ and revolutionary moves from the grassroots against state planning, which here is deemed as bureaucratic (Roy, 2016). In this view planning is seen as being top-down and informality is an alternative of the poor. Ananya Roy is a Professor of Urban Planning, Social Welfare and Geography at the University of California, Los Angeles. Her work is centred on global racial capitalism and postcolonial development from a political economy and political perspective that is vested in social justice (UCLA, 2024). De Soto is an economist from Peru, focused on the informal economy, specifically on property and business rights. He was credited with being responsible for legal and regulatory changes within Peru’s economic system that changed the property system to enable ownership of ‘titles’ (referring to land as property) to over a million families. The system was said to eliminate the red tape of bureaucracy within the formal economic system. He then also assisted other countries with the same. He further noted that resolving property titles does not necessarily resolve other issues (Clift, 2003: 8-11). The South African Planning System sees informality differently and by default aims to formalise informality. The planning theory referred to here speaks to an approach and narrative that focus on informality because of being poor and not as being part of the planning system (rather as a victim of it). It does not look at the need for planning, infrastructure or development itself, but on the welfare of the poor. Informality

is a significant issue in South Africa, and many attempts have been made to address it. (See Chapter 4 for a further discussion of informality as related to the South African planning system.)

Modernism and post-modernism

The planning narratives as mentioned above and in section 2.4.2.2 could further be grouped into two larger distinguishable groups. The distinction would be recognised in most planning literature in terms of patterned arguments or common associated words used, as well as indicated focus areas and critique. (See section 2.4.2.1 for the related typologies of planning that indicate different strands of planning narratives.)

The two larger divisions or categorisations in the body of planning theory are the modernist and the post-modern spheres of planning narratives. Watson (2016:32) differentiates between two larger groups of thought in planning theory within the development or progression of the development of thought in the body of planning theory. It is identified as the two opposing ways of thinking about planning – the social sciences representing the postmodern and structuralist ways of thinking about planning or planning approaches opposed to the regarded as modernist, rational and technical approaches to planning. As the narratives within planning theory developed or changed over time, Watson (2016) indicates that Postmodernism and poststructuralism disassembled or undid the modernist, rational and technical approaches to planning, which prevailed in the 1950s and 1960s. Watson (2016:33) notes that the break from the modernist and positivist ways of thinking came about during the 1980s and this move was termed as ‘post-positivism’ (Watson, 2016). This breakdown was perceived as a ‘shift’, away from positivist (modernist) epistemologies. The philosophers mentioned as the pioneers of this shift (referring to the philosophy of science) are Kuhn and Feyerabend. The ‘new’ theories and disciplines sided with larger social and historical contexts and social reality was understood as a social construction. This is known as the post-positivist way of thinking in social theory (Allmendinger, 2002).

According to Allmendinger, the post-modern stance is that all meta-narratives are questionable and aim their energy towards the critique of the modern movement (totality and structuralism) and its foundational character, which is claimed to be a search for universal truth (Allmendinger, 2002). Nigel Taylor (1998: 163) poses the view that

postmodernism developed as a result of and against modern practices (as Allmendinger confirms: 2002). Taylor (1998:163) mentions the work of Jane Jacobs (1961) *The death and life of Great American Cities* as a text that criticises modern city planning as being simple-minded amongst other contesting entities. Jane Jacobs was credited as an activist and journalist without formal training.

Almendinger (2017:168-190) provides a discussion of what postmodern narratives entail as per the table below.

Table 11: Post-modern narrative assessment according to Almendinger (2017)

After Modernity (Almendinger, 2017:168-190)	
Components	Fragmentation, diversity, breakdown of planning practice, postmodernism, a search for the 'new'.
Symbolic or word generalizations	Modernism is associated with the Enlightenment; against rational form of social organisation and thought; Enlightenment seen as attempting to obtain liberty through knowledge based on reason, individualism, freedom, tolerance, empiricism, science, uniformity of human nature; modernity associated with capitalism, liberalism, democracy, state working towards development; criticises instrumental rationality; rationality seen as attempts to control; Karl Marx criticizes rationality in practice; Habermas criticises it as a 'project of modernity'; modernity became a meta-narrative; modernity is seen as a search for absolute truth, which is seen as being impossible; planning is seen as a product of modernity; power concerned with specific reality rather than understanding what the reality is; power seeks change and does not seek knowledge; modernity; planners seen as experts; critical of town/urban and regional planning itself; modernisation is seen as state-directed futures; planning in its participation is seen as being used to exclude minorities and using the enforcement of repression and exclusion; planning used as form of socio-economic control through location of development; planning favours the majority culture of a nation state and excludes minority cultures seen as a method of ethnic and social control; planning seen as socially exclusive, racially intolerant, gender biased; post-structuralism poses knowledge as being indefinite and within context and theory is a reflection on practice; extreme liberalism; some objectives of planning can be achieved with

	non-planning; planning seen as inherent in land markets; development standards (infrastructure, density) makes property unaffordable for homeless people; informal planning contests function of planning and formalisation of space; planning seen as possibly rendering temporary measures permanent; complexity; places are complex, open systems; planning is seen as a process of understanding and managing change, not having a predestination; knowledge is socially constructed;
Exemplars: problem solutions accepted by general community	New ways of planning role in society; modernism and its foundations should be demolished because of more diverse urban areas; heterogeneous planning approach; rely on Foucault to deconstruct the 'hidden world' of power in planning; should not be comprehensive; relativism; adapt to plural and diverse society; planning and urban governance should include social justice, inclusionary politics, inclusive citizenship; reformed community and focus on civic culture and not public interest; seek consensus in space -making as focus; calling for open systems instead of closed systems; complex systems have many elements; elements in complex system act dynamically; self in relation to others; open-ended and asymmetrical nature of society; complex systems are adaptive and interdependent; methodological pluralism combining qualitative and quantitative, historical and ethnographical, holistic and analytical approach to system; communicative and collaborative planning;
Mentioned authors in this tradition	Discussing modernity: Hall (1992); Harvey (1990); Harvey (1990); Healey (1993); Low (1991); Sandercock (1998); Postmodernism: Nietzsche; Jurgen Habermas; Fillion (1996); Bent Flyvbjerg; Beauregard (1996); Sandercock (1998);

	2003); Boyer (1983); Yiftachel (1994, 1998, 2000); Soja (1997); Baudrillard. Post-structuralism: Nigel Thrift (2004); Massey (2005,2007); Murdoch (2006); Ananya Roy (2005); Banham (1969); Denman (1980); Holsten (1995); Cilliers (1998); Byrne (1998; 2003); Rydin (2007)
Critique	Not providing a way forward; Habermas; Karl Marx; Giddens (1990); Harvey (1990); not indicating what planning should be; mostly criticism of planning not providing solution to problems; vague; Sorensen and Auster (1998); addressing racial and ethnic monoculture is not within the domain of planning;

Source: Almendinger (2017:168-190)

According to Watson (2016), it could be argued that planning is intrinsically linked to philosophies, epistemologies and theories basic to modernism and positivism. This is echoed by various other authors (Watson, 2016:32,33). Planning is then inherently linked to modernism and positivism, and it could then be said that post-modern thinking is entrenched in criticism against planning as a discipline or practice.

Criticism of modernism

In post-modern criticism, modernism is associated with the positivist approaches to planning theory and in turn was associated with scientifically rational and procedural ways of thinking about planning (Watson, 2016). From a critical point of view, planners were seen as a technical expert, who had to manage the planning process as an individual in a rational and procedural manner (Watson, 2016:33). The post-modern criticism perpetuates that the rational planning methodologies where and are blamed for the 'disaster' of high-rise towers for the poor and the dominance of economic criteria for the justification of development. They are blamed overall for the neglect of the 'poor', disadvantaged and discriminated peoples (Allmendinger, 2002). This indicates that it is assumed that planning and planners may have authority over decision-making and much

power and perhaps do not recognise that there are many different systems that work into planning itself or practise as it may. Watson (2016) does not shy away from categorising approaches to planning, specifically the rational and technical approaches to being modernist and the opposing or conquering approaches as postmodern and poststructuralism. Post-structuralism, which is one of the post-modern branch/streams, emphasises the dynamic relationship between objects and words and claims that meaning is not stable but is changing and elusive. Truth is replaced by interpretation, objectivity with subjectivity (Allmendinger, 2002). There is little literature from the indicated modernist side of thinking that calls it such – it could be deemed to be simply planning from this way of thinking.

Allmendinger (2002) identifies the characteristics of post-positivism that include: the rejection of positivist understanding and methodologies; require approaches which contextualise theories and disciplines in larger social and historical contexts; normative criteria for deciding between competing theories; perception that the individual is autonomous subjects; postmodernism and social theory seek similar objectives.

According to Allmendinger (2002), post-modernism and social theory include the following principles: The break-down of transcendental meaning; discursively created subject; the role of cultural influences on society; fragmentation and dispersal; refers to Foucault and Baudrillard's power. Nigel Taylor (1998:164-167) notes that postmodernism challenges science as acknowledging the world as being much more complex than was first realised. Postmodernism celebrates diversity, complexity, pluralism and difference, while modernism is concerned with order, uniformity, tidiness, and simplicity (Taylor, 1998:166).

Land use planning is commonly regarded as being modern (Allmendinger, 2002). According to Allmendinger and Friedmann, planners claim that their advanced degrees in relevant disciplines and professional fields give them privileged access to scientific knowledge and know-how. They apparently also claim that this knowledge is generally superior to knowledge gained in other ways (from practice experience for example). (Also see section 2.4.2.1.5 that relates to the different narratives in planning.) Allmendinger argues that this makes them (planners) 'true heirs of the Enlightenment' (Allmendinger, 2002). This could be said to be very critical to planning and to any profession. It is

needed for almost any person in almost any discipline to study for a degree and why would a planning degree be more privileged than any other? It is arguably and inherently the purpose to develop in some educational platform to be able to assess circumstances, context and more within a discipline and essentially what that discipline is about. Other ways of learning, as Allmendinger indicated, are learning in practice and rightly so. Learning for a degree and practising it are two different ways of learning – both are needed to understand planning. It is somewhat elusive in trying to determine what kind of planners Allmendinger really refers to here. My simple understanding is that one studies towards a degree in planning and then if possible and in some way, practice planning – which inherently involves not just the thinking of planning, but the implementation – within the given parameters and curbs. Planners who practice planning could not be said to be privileged in terms of know-how – every context is different, and it is the management of the framework of information and gathering information that indicates the direction and action planners take, just as Faludi (1973) attested in his description of planning. They are informed by context.

Post-positivism, postmodernism and post-structuralism have provided both critiques and alternatives for planning theory and practice (Allmendinger, 2002) and were expressed in the understanding of roles of planners in planning theory discussions (Watson, 2016). The post-positivist perspective emphasises that planners have most often relied on various exogenous theories (with origins outside of planning), which were not directly concerned with planning, but had/have relevance for space, policy processes or governance. Some of these theories are theories of democracy, cognitive psychology, regimen and regulation theory, implementation theory, central-local relations, nationalism, and a host of other 'meso-level' theoretical constructs. In contrast, indigenous planning theory is more specific. Most books on planning theory list various perspectives (Marxism, neo-liberal, advocacy, systems, rational comprehensive, and design, communicative and neo-pragmatic theories) which did not originate from within planning discourse but were interpreted, mediated and used to prescribe and understand planning theory and practice. According to Allmendinger (2002), the role of social theory and planning theory should be to systematically abstract and reflect upon the workings of the social world. The earlier ways of thinking about planning were categorised as being modern in that they were more rational and procedural or at times more synoptic – with the focus more on the how we plan. Post-modern thinking in planning focuses more on the community/people/persons and the *who* we plan for and not the *how*. When looking at the development timeline of different ways of thinking about planning and going back to the related literature – the origins of planning and certain developments of early planning were focused on or aimed to address the same objectives – to create a better environment for communities or people to live in – just think about Banfield and Meyerson, who started from a case study aimed at the improvement of slums in Chicago. That is constant throughout the ways of thinking. Planning in practice does inherently have modernist and post-modernist qualities, though *modernist* in this sense is removed from the post-modernist planning critique of modernist planning – this modernist reference refers to modernism in the sense of design. The one cannot be without the other. Furthermore – the earlier ways of thinking about planning that leads to the profession, was not far removed from how post-modernist thinking started. Both started from a point of view where they wanted to improve the quality of life for people. The reading of the planning literature alludes to another contrast or underlying contrast, namely that of the natural sciences almost versus the social sciences.

2.4.2.1.6 Planning as Environmental Science and Planning as Social Science or just planning

Planning literature invariably refers or makes an underlying reference to the different spheres in planning foundations or perhaps education in the sphere of the Environmental Sciences and the Social Sciences.

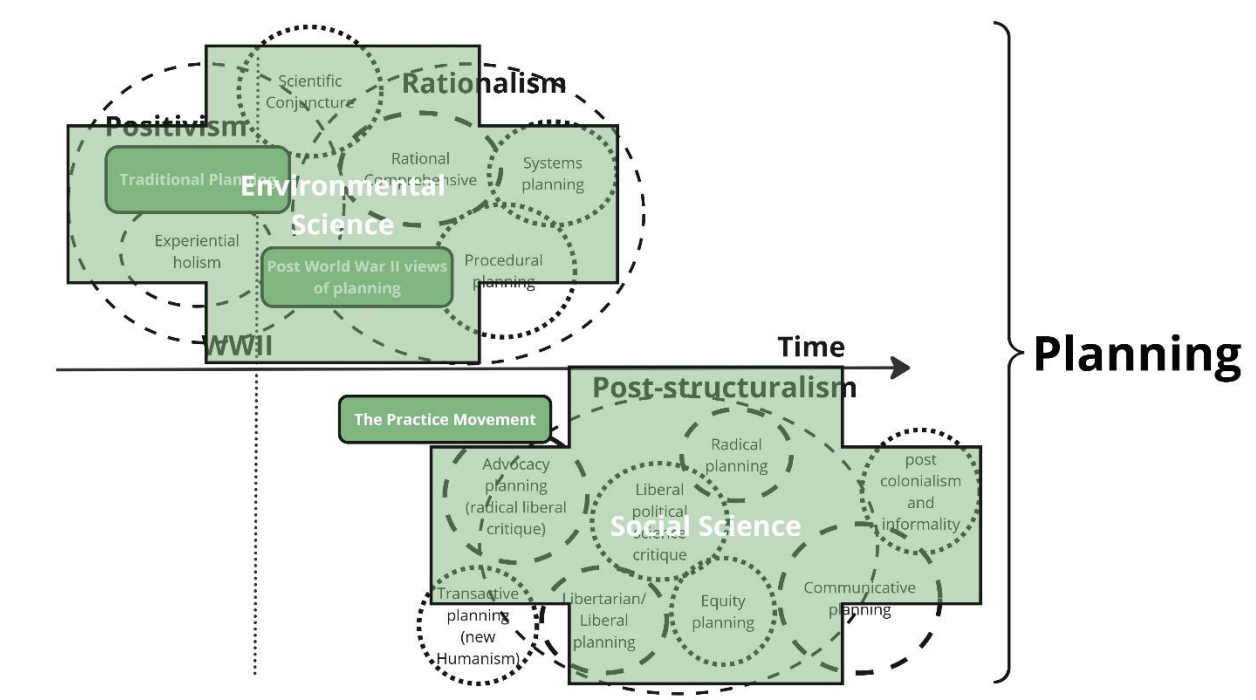


Figure 15: Integration of posed frameworks from Healey et al. (1982), Shönwandt (2008), Taylor (1998), Weaver et al. (1985), Yiftachel (1989) and Allmendinger (2002, 2017)

Source: own construction

Allmendinger describes the classic division between the naturalists (positivists) and the interpretative sociologies, with emphasis that the two ‘schools’ exist in complete isolation from one another and that they emphasise different insights into the knowledge of society (Allmendinger, 2002:3-18). He claims that the social sciences have been dominated by a positivist epistemology which promotes scientific and technical knowledge in contrast or at the cost of collaborative approaches (Allmendinger, 2002). (See section 2.4.2.4 for this distinction.) In South Africa the planning system encapsulates and adheres to both the naturalists and the sociologies as part of the legislative framework (see Chapter 4). The two ‘schools’ are not in conflict with each other within the South African planning system

but incorporated within a decentralised system. (See Chapter 4 for the South African Planning system.)

Allmendinger (2002), among many other theorists, distinguishes between the natural and social sciences within planning and indicates that there are differences in their domains, natures and purposes. Allmendinger (2002:3-18) refers to the history of social theory and its debates when writing on the scope of planning theory. He indicates that certain unnamed pioneers questioned the distinction between the natural and the social sciences and the positivist understanding of knowledge, their neutrality in observation (Allmendinger, 2002). Allmendinger (2002) indicates that this dominion of the natural sciences over the humanities started to break down during the 1960s and 1970s. This correlates with the same arguments and criticisms made by the post-modern movement towards the indicated modernist movement. Also, they claimed that the natural sciences were somehow dominant over the humanities. Allmendinger claims that planners moved away from naturalism, asserting that they were naive empiricists, because the techniques and methodologies applied did not improve practice or the ability to predict behaviour (Allmendinger, 2002). It could be argued from the body of literature in planning theory that those referring to the naturalists or Environmental Science in Planning refer to modernism as the critique used to refer to it is the same and the Social Sciences are related to the post-modernist movement in planning theory and thinking about planning. However, it is not clear how certain ways of thinking are entwined in one or the other – viz. the motivation and origin of the Natural and Social Science spheres in planning. It could be necessary to look at the educational institutions or schools of planning where planning is taught, but planning is frequently taught in faculties like Engineering, Social Sciences and the Natural Sciences. The content of learning could only be speculated about, and vast generalisation cannot suffice – there are not significant studies to prove that the one kind of thinking is based in the Natural Sciences and the other in the Social Sciences. Planning involves many disciplines and constitutes a multi-disciplinary composition depending on the relevant context. The nature of the faculty it resides in depends on the history of the universities or institutions development and not on the development of what planning or planning theory is. A clear distinction between the Social Sciences and the Natural Sciences within the sphere of planning cannot be made. Though most of the planning literature in terms of planning theory is said to be normative,

it is this normative level of theorisation and what, or in some cases who, informs it that has become somewhat contested in South Africa.

Planning Theory, specifically in South Africa, has undergone a significant shift. Watson (2016) notes a 'southern turn' in planning theory in that, in her research and experience, it could be averred that the body of planning theory, as mostly written by authors from the global 'North', may perhaps not be useful to planning theory of the 'South', particularly when it comes to planning practice, because in her view, it does not recognise the context of time and place in differences between the hemispheres. The term 'southern theorising', which does not yet substantially refer to a body of southern planning theory, in planning consists of societal conflict, ethnicity, identity and informality. Frequently colonialism and postcolonialism frame planning theory. It is identified as emergent thinking, which encompasses different assumptions, premises and goals (Watson, 2016). In a presentation Professor Vanessa Watson did early in 2021, at the request of Professor Bruce Stiftel from the School of City and Regional Planning at Georgia Tech, about planning for cities for the Global South, she refers to deep and major differences between the Global North and Global South in terms of context. These indicated differences are multi-dimensional – and therefore include cultural, economic, spatial, institutional, built environment, environmental issues and more. She argues, from many years of research and study, that planning theories are not equally relevant everywhere and she found that a vast generalisation of planning theory and its assumptions may not be valid everywhere (Watson, 2016, 2021; Cilliers, 2018). The shift that was mentioned by Watson is related to a paradigm shift in ways of thinking about planning in Sub-Saharan Africa, specifically South Africa. The normative ways of thinking and approaching planning captured in planning theory have been persistent in democratic South Africa. However, the shift could indicate the emerging and prevalent literature and changes in curricula of planning as well as the political approaches of certain institutions (or their policies) that relate to informality, identity and decolonialisation. This is located at the earlier backdrop, indicating the 'conflicting rationalities' between the modern state and the post-modern society – which has made some progress. It could be argued that a few planning theorists, active in the debates about what planning is, pioneered this shift. Some of these South African authors who are positioned in this way of thinking about planning are: Philip Harrison, who calls for a pragmatic approach in planning and wrote

numerous research articles and books that contextualise planning, Vanessa Watson, who spent at least 30 years of her life thinking about planning in South Africa and identifying the key issues that need to be addressed, along with a multitude of publications needed to build on each other. Alison Todes writes more specifically about Spatial Planning and is completely entwined with the development of thinking of planning in it and more recently there has been Mfaniseni Shilongonyane, who focuses on African Identity in planning, decolonisation and unearthing the underlying ways of thinking about planning. Watson (2016: 34) argues that the planning theories written in Europe and Northern America were developed from the assumption that their capitalistic economic system had been well-established and the functioning of civil society was very different from that of the southern hemisphere. It could be said that the indicated theories, as understood as the body of Planning Theory, are related to education and certain research areas – inherently associated with '*what planning is*' and '*what planners do*'. The ways of thinking about planning as embodied in Planning Theory encompass many different approaches, as indicated in the development of planning theory narratives over time. The essence of these approaches is very similar and identifiable in any country and context. However, when it comes to substantive planning theory or theory *in* planning, it does carry weight in that substantive planning theory focuses more on reality, implementation and encounters of the many various aspects in planning – for example the idea of using case studies from other countries that do not have the same social and economic environment and challenges (Watson, 2016). In recognising that these substantive planning theories or research are written from other parts of the world that do not necessarily apply to specifically South Africa, it allows for the further development of normative planning theory. This seems to be the route to take in the identification of certain gaps in planning that have been emerging currently. It took almost 30 years to bring about a shift in planning theory specifically for South Africa or perhaps developing local normative planning theory. Though these have shown signs of emerging, if it could be called emerging when it has been building for many years, lines of thinking could also be associated with the trends in time – that develop because of certain aspects, occurrences and movements in time. The development of normative planning theory that informs substantive theory and *vice versa*, specifically in South Africa, is guided by the communicative planning theory, political economy (Neo-Marxist), neo-liberal, radical and equity planning perspectives as well as a new form of humanism. The communicative

planning theory forms a significant part of the normative theory in South Africa. These different and similar ways of thinking are typically associated with post-modern thinking of planning. Planners who are equipped within the traditional forms of planning that include systems planning and procedural planning, typically write research literature related to substantive planning theory – this is not generalising in that all substantive planning theory does not indicate that the authors are vested in traditional planning – almost all ways of thinking manage research in theory in planning, or substantive planning theory. Traditional planners or planners who think about planning from the procedural or systems planning ways, do not typically engage in the debates of normative planning theory, though there are a small body of theorists who still do.

Planning literature that includes normative and substantive planning theory and/or research directly related to the subject of South Africa and planning is predominantly written by South African authors. This was found in a study conducted between 2016 and 2018 to reflect the South African planning literature base in terms of the origin of writing about South African planning issues (Cilliers, 2018). Cilliers (2018) demonstrates, via two context-specific case studies, that international or globalised theory does apply to these studies, confirming that planning is context-defined, especially in South Africa. It is emphasised that Planning should be approached footed, with social scientific facts indicated by real data and context specific challenges and complexities within the problem/planning situation (Cilliers, 2018). The bulk of planning literature is made up of a focus on substantive planning theory, though much of the research has normative influences (some of which are indicated and some not). This study also addresses 'what planning is' and is therefore also normative as well as substantive. It is emphasised here that the local context is crucial and could be regarded as the core part and focus of planning. The importance of context is echoed throughout planning theory – be it normative or substantive. In certain perspectives in planning theory, it is emphasised and regarded as a key focus and in others it is assumed as a given that contextual analysis informs and is part of planning.

2.4.2.2 Substantive planning theory – theory in planning

"Theory in planning" as discussed by Faludi (1973) relates to substantive theory. Theory in planning, which is inherently more substantive, is related more to the question of 'what

do we plan' and 'how do we plan'. These kinds of articles, research and studies, involve the practice and are embedded, guided and controlled by legislation and policy.

Theory of planning (which also relates to the role of what a planner is) connects with the governing body of planning in South Africa. The governing body of planning in South Africa is called the South African Council for Planners (SACPLAN) and it has its own enabling legislation, which entrenches Urban and Regional Planning as a profession (the Planning Professions Act 36 of 2002). The Act was promulgated under the then National Government Department of Land Affairs. This also relates to the next chapter that includes a discussion of governance and legislation. The Act identifies certain areas of work reserved for Urban/Town and Regional Planners and more. SACPLAN developed regulations, which describe and specify the role of the planner and the competencies a planner should have in South Africa.

Theory in planning, which is arguably closest to empirical theory and/or substantive theory, constitutes or relates more to the different sectors within planning practice (practice being the administration, private, public, research or theorisation practice of planning). Theory in planning, that is related to more substantive theory, involves research done on a more empirical level. Empiricism and pragmatism in planning could be said to function within the same level of theorisation, though when discussed is normative and philosophical. The theoretical and philosophical underpinnings of theory of planning could be said to transcend the research done in the body of Theory in Planning (being substantive). Theory in planning, as it is proportionately related to empiricism, could be argued to be directly related to 'how do we plan' and 'what do we plan' and 'for whom do we plan'. Primarily of interest here is – 'what do we plan'? This could be inherently linked to the SACPLAN description of planners' competencies and fields of expertise – which is also ascribed to 'what planning is', which is again related to Theory of Planning (normative).

Theory *in* Planning or substantive theory of planning, constitutes different areas of specialisation, or could even go as far as to indicate what could be said to be different sub-disciplines of planning. In South Africa the role of the planner is stipulated by the South African Council of Planners (SACPLAN), the South African Association of Consulting Professional Planners (SAACPP) and the South African Planning Institute

(SAPI) (Schoeman, 2010). Substantive theory could possibly be curbed by reflection on the role of the planner. The role of the planner will be discussed in the next section together with the profession of planning – with reference to this – planning involves the overlapping of various and related disciplines (Schoeman, 2010). Schoeman (2010,2015:50) identifies the domain for urban and regional planners based on national and international norms that would include the following areas of specialisation: urban planning; spatial planning; rural development; land-use management; the built environment; policy formulation; land and related issues; transportation planning; environmental management; socio-economic development; facilitation, communication and participation; human settlement development or housing; feasibility studies; project management; development administration; and management and analysis through application of Geo-support systems (GIS). This list is not exclusive and there are more areas of specialisation and overlapping disciplines. Research and literature that are specifically related to substantive issues within these disciplines or sub-disciplines within the domain of planning could be said to be within the sphere of Theory in Planning or substantive theory of planning, and again it should be noted that normative planning theory and substantive planning theory are interlinked and the one could and usually does inform the other – the divisions are not always clearly perceptible.

2.4.3 The institutionalisation of land and theorisation

The fundamental component of urban and regional planning is land. Land is the common denominator of planning. Land is greatly institutionalised in the relevant government and functions within a given set of legislative frameworks.

Institutional theory at it's core relates to the discussion of rules, regulations and requirements to which the organisational structure, public and/or government must comply, in order to provide legitimacy in the given system (Lammers and Garcia, 2014). Lammers and Garcia (2014:195-196) identify six characteristics that populate the research field of institutional theory and they are:

- Institutions are social phenomena – they continue across space and time;
- Institutions have social meaning along with and over the practical requirements;
- Institutions organise social life throughout and between organisations;
- Institutions are evidently vested in a vast range of social phenomena that includes normative, cultural-cognitive and regulative aspects;

- Institutions absorb the intricacies of repetitive social behaviours and are underpinned by cognitive understandings and normative systems that provide meaning to social interchange, which in turn forms social order;
- Institutions contemplate rational purposes that guide behaviours in specific directions.

These indicated characteristics of institutions consists of established communication patterns and behaviour that exceed distinct organisations (Lammers and Garcia, 2014: 196).

The organisation of land within the institutional organisation in South Africa speaks of the change of the underpinning social and political meanings that eventually translated into the formation of SPLUMA and the transition from the apartheid norms and standards towards the democratic norms and standards, which includes the initiating role of the Constitution. As the social and political underpinnings changed, the subsequent rules and regulations conformed to the formal change of legislation that relates to planning and land. This is a significantly long process.

Dacin, Goodstein and Scott (2002:45) indicate that institutions admittedly facilitate change and construct the nature of change across different levels of contexts; they also change themselves in character and strength over time. They continue to deliberate on Oliver's (1992) findings on three primary sources of pressure on institutionalised norms and practices, which are functional, social and political sources (Dacin, Goodstein and Scott, 2002:46). The political source of pressure is typically influenced by shifts in the underlying power distributions and interests that have supported and qualified the existing institutional organisation. The shifts may happen in response to other aspects that pressure organisations to question the legitimacy of a given practice (Dacin, Goodstein and Scott, 2002:46).

The South African planning system that relates to the institutional organisation, changed significantly from 1991 until 2025, which was informed by social and political standards. The decision-making bodies, structures, influences, principles and administration were transformed.

The institutionalisation of land relates directly to the entire planning system, also very specifically to land use rights, inclusivity, land tenure and governance.

2.5 Conclusion

The discipline of town/urban and regional planning overlaps with several other related professions and practices but also has clear boundaries. Land, as the fundamental component of planning, is institutionalised and regularised through government structures that informs the legislative and administrative framework. Planning theory narratives, in

more recent times, have been more focused on criticism of traditional planning, which is still functional within the framework of governance and legislation in South Africa (see Chapter 3). The critical narratives in planning literature are accommodated within the traditional structure of planning.

CHAPTER 3 THE SOUTH AFRICAN SPATIAL PLANNING AND LAND USE MANAGEMENT SYSTEM – TRANSFORMING THE LANDSCAPE OF SPLUMA AND GOVERNMENTAL RESTRUCTURING (PLANNING SYSTEM REVIEW AND ANALYSIS)

3.1 Introduction

The administration and decision-making of Land Use Planning changed with the enactment (President of the Republic of South Africa, 2013)⁵ and then the implementation (President of the Republic of South Africa, 2015:3)⁶ of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) and its Regulations (Department of Rural Development and Land Reform, 2015)⁷. What impact did the implementation of SPLUMA have on the Spatial Planning and Land Use Management System? Most importantly, it significantly expanded the needed capacity of the local government in terms of the Land Use Planning system that includes decision-making and administration. The momentum of these changes has accumulated since the promulgation of the 1996 Constitution. The implications of the geographical boundaries of municipalities, the interplay between the provincial and local governments' land use administration and the Spatial Planning and Land Use Management System form the core of this historical momentum. This has, however, been complicated by historical land ownership issues.

Firstly, the study considers what the Spatial Planning and Land Use Management System is and what constitutes it. Secondly, it considers the Land Use Scheme as the key planning tool to govern land use planning within the planning system and its administration. Thirdly, the changing landscape of the municipality or local government

⁵ SPLUMA was promulgated on 5 August 2013 (also see implementation).

⁶ The proclamation for the date of operation for SPLUMA was advertised on the 27 May 2015 and indicated that SPLUMA would come into operation on 1 July 2015.

⁷ The regulations for SPLUMA were published on 23 March 2015 in Government Notices Regulation 239 in Government Gazette 38594. The Department of Rural Development and Land Reform is undergoing restructuring currently known as the Department of Rural Development and Land Reform, under which the regulations were published, then underwent restructuring and is currently known as the Department of Agriculture, Land Reform and Rural Development.

is considered, more particularly its geographical and administrative scope, in terms of land use planning. These considerations will answer the question of what impact Section 33(1) of the Spatial Planning and Land Use Management Act 16 of 2013 has had on the capacity of municipalities, being the body of first instance for land use planning and development administration. These physical changes to land use administration necessitate a re-thinking or consideration of the needed capacity and possibly the structure of the land use administration system.

What can be constituted as the Spatial Planning and Land Use Management System? Legislation primarily informs the framework and structure of this system. SPLUMA is the first and very long-awaited national legislation that introduced a unified system for spatial planning and land use management to address the inherited system that consisted of fractured legislation inherited from the apartheid government (Schoeman, 2015:53,55). The fractured legislation refers to the different forms of legislation prescribed to the different segregated areas (Van Wyk, 2020:44-50). Structurally and geographically, it refers to areas within the urban edge, outside the urban edge, the so-called historical “Homelands” and rural areas (De Visser, 2009:8). The geographical and administrative structures of a municipality changed before and after the establishment of the Constitution of 1996, which influenced the application of planning legislation as well as the formulation of subsequent legislation. This is discussed under Sections 3.2, 3.3 and 3. Apart from the structural division of municipalities, this network of legislation also included legislation that applied to the four pre-democratic provinces, the four independent states (Venda, Transkei, Ciskei and Bophuthatswana) and six self-governing territories (Gazankulu, QwaQwa, KaNgwane, KwaNdebele, KwaZulu and Lebowa). The Development Trust and Land Act 18 of 1936 was responsible for what was defined as a ‘black area’; the Bantu Authorities Act 68 of 1951 (also incorrectly called the ‘Black Authorities Act’) provided the larger legal framework for the establishment of the independent areas; each independent area was established through this Act, for example KaNgwane, as the area where SiSwati people lived, was established on 28 November 1975 by this Act and its government established in 1977; Bophuthatswana, as an area where Setswana people lived, was established on 21 April 1961 and gained independence on 6 December 1977. Each independent area was established at different times within this Act. The turning point for the significant change within this system came when the Government of National

Unity assumed office in May 1994 and established the nine provinces within the context of the Interim Constitution (IGFR, 1999:1-81). This unified the different governing and administrative bodies within the Republic of South Africa and assigned administration to different spheres of government to address development and service delivery (IGFR, 1999:1-81). This initiated the movement that resulted in the adoption of SPLUMA with reference to land use planning.

3.2 The content of SPLUMA: What it includes and excludes

The purpose of SPLUMA was to create a unified and integrated spatial planning and land use management system for the whole of South Africa (Schoeman, 2015:53-55; Van Wyk & Oranje, 2014:8-9). This SPLUMA system is directed by inherently developmental principles (SPLUMA:16-20) that should be considered and motivated in all development decisions. The developmental principles are similar in purpose to the principles of the Development Facilitation Act of 1995. Furthermore, the legislated system provided for the governance system and description of the roles of spheres of government within the planning system. Section 9 of the SPLUMA refers to the National Government's role of support and monitoring in terms of the Act. Section 10 of SPLUMA refers to the Provincial Governments' role of support and monitoring in terms of the Act. Section 11 of SPLUMA refers to the considerations of support and monitoring for municipalities. Sections 13 and 14 of SPLUMA indicate the requirements and content for a National Spatial Development Framework (SDF). Sections 15-17 of SPLUMA indicate the requirements, content, legal stance and governmental alignment of a Provincial Spatial Development Framework (SDF). Sections 18-19 of SPLUMA indicate the requirements and content of a Regional Spatial Development Framework (SDF). Sections 20-22 of SPLUMA indicate the required process, content and decision-making authority for a Municipal Spatial Development Framework (SDF) and necessity for alignment of the SDF's for governmental spheres. Section 23 of SPLUMA establishes that the municipality is the executive authority over Land Use Management and the Land Use Scheme and indicates the requirement of subsequent by-laws as well as the inclusion of Traditional Authorities in its decision-making processes. Section 33(1) establishes that the municipality is the body of first instance for development applications and is noted as Municipal Land Use Planning. SPLUMA outlines the establishment and functioning of the Municipal Planning Tribunal (MPT), which is prescribed as the decision-making body for land use planning

applications and considerations. Sections 35-50 of SPLUMA prescribe the establishment of a Municipal Planning Tribunal (MPT), the composition and other internal arrangements of the MPT, the prescribed process of consideration and decision making of land development and management applications (where applicable). The system confirms the authority of the local government (SPLUMA, Sections 33 and 23:34, 44) and the fundamental municipal role in the planning system (Schoeman, 2015:53-55; Van Wyk & Oranje, 2014:8-9). It provides for the land use scheme as the primary instrument for land use management and stipulates its required content and functioning (SPLUMA: Sections 24-32). SPLUMA, Section 26 (1), specifically indicate that a Land Use Scheme has the force of law, whereas the Spatial Development Framework (SDF) is considered as a guide for decision-making on land development applications (see Sections 22[2] and 42[b]). Sections 24-32 stipulate the needed content and administration processes for the Land Use Scheme (also see Reg 14-19 in Government Notice 239 in Government Gazette 38594 of 23 March 2015 that provides for the submission of land development and land use applications, categorisation of applications as well as process timeframes and other implications, including traditional authorities). Schedule 2 of SPLUMA 2013 lists the required land use categories and purposes, also see Section 23(2) of SPLUMA and Reg 3 in GN 239 in GG38594 of 23 March 2015 that refers to the involvement of Traditional Authorities and requires some integration. It stipulates general inclusive land uses, the definition of a land use scheme and the required contents of such a scheme. Schedule 2 of SPLUMA 2013 lists the required land use categories and purposes (also see Section 23[2] of SPLUMA and Reg 3 in GN 239 in GG38594 of 23 March 2015 that refers to the involvement of Traditional Authorities and requires some integration). Section 25(2) of SPLUMA 2013 stipulates the required content of a land use scheme. Furthermore, it also includes the outline of processes and procedures for planning applications with guiding timeframes. Section 44 of SPLUMA 2013 stipulates the requirement of prescribed timeframes for land use and land development applications. (Also see Regulation 16 of Government Notice 239 in the Government Gazette 38594 of 23 March 2015.) In terms of Spatial Planning, it prescribes the Spatial Development Framework (SDF) as the primary tool for spatial planning. Sections 12-22 of SPLUMA 2013 indicate the required content, considerations and procedures for National, Provincial, Regional and Municipal Spatial Development Frameworks (SDFs) as the spatial planning tool in SPLUMA 2013. Lastly, it outlines appeal procedures for land use

applications and repeals outdated legislation. Schedule 3 of SPLUMA 2013 repeals five Acts in its entirety which includes the Development Facilitation Act 67 of 1995; the Physical Planning Act 125 of 1991; the Less Formal Township Establishment Act 113 of 1991; the Physical Planning Act 88 of 1967 and the Removal of Restrictions Act 84 of 1967. The mentioned content forms the statutory system for Spatial Planning and Land Use Management in South Africa. (See the summary of SPLUMA 2013 in the Act itself.) This system took many years to develop, and its enactment and implementation were essential to address and rectify the fragmented land use planning legislation inherited from South Africa's past.

3.2 Structure of legislation pre-SPLUMA/SPLUMA and its influence on addressing the Planning System

The legal structure of the inherited system largely involved legislation that was promulgated on a provincial governance level but also included national legislation and the local Town Planning Schemes. Schoeman (2010) categorised the nature of spatial planning that involved the related planning legislation in South Africa into three phases as follows: The urban and rural formation phase (1652 to 1948); the urban and rural separation (fragmentation) phase (1948 to 1994) and the urban re-integration phase and rural development (post-1994). The urban and rural formation phase, as well as the fragmentation phase, produced numerous pieces of legislation that had to be redressed to confront the urban and rural segregation. As part of addressing this structural difficulty, SPLUMA with its Regulations was promulgated as national legislation⁸, to create an umbrella for a uniform South African land use planning system. The intent was that subsequent provincial legislation would follow in repealing the inherited provincial ordinances of the previous dispensation, which were primarily used for land use planning applications within urban areas before the implementation of SPLUMA or the repealing of the provincial ordinances by new provincial legislation (Van Wyk & Oranje, 2014:8-9). Land use planning applications are discussed more fully in Section 3.6 below. Considering the different levels of legislation in the statutory land use planning system in

⁸ SPLUMA 2013 promulgated by the Presidency in the National Government Gazette and Regulations in GN 239 in GG 38594 of 23 March 2015

its transitional phase, the restructuring of this system could be regarded as being complicated in that legislation cannot be repealed without the promulgation of replacement legislation (Van Wyk, 2013:102). Legislation can only be repealed on the same administrative level that it was originally promulgated in – i.e., provincial legislation repeals provincial legislation, national legislation can only repeal national legislation and not provincial legislation. Unfortunately, the promulgation of SPLUMA did not produce the timely desired provincial legislation in all provinces (Van Wyk & Oranje, 2014:8-9). The result is that municipal by-laws mostly preceded the needed and related provincial legislation, except for the Western Cape (Poswa & De Visser, 2017:3). The related provincial legislation followed later and, in some cases, still should be promulgated in order to repeal the ordinances. Limpopo Province still needs to promulgate the Limpopo Spatial Planning and Land Use Management Bill, 2022; the Mpumalanga Town Planning and Land Related Laws Repeal Act 2 of 2016 came into operation on 1 October 2019 and repealed the relevant Ordinances 15 and 20 of 1986; the Northern Cape Province (NCP) repealed Ordinance 15 of 1985 in 1998, but still needs to establish provincial legislation in line with SPLUMA. The NCP uses appropriate by-laws, for example, the Spatial Planning and Land Use Management by-law on municipal land use planning for Ga-Segonyana Local Municipality, Northern Cape Province, 2015. The Eastern Cape Province (ECP) still needs to establish SPLUMA-related legislation to repeal the ordinance. The ECP recently enacted legislation for environmental management, tourism and the socio-economic consultative council (2024), but it is not effective yet. It was strategically necessary to promulgate SPLUMA at a national level in order to absorb the preceding development of transformative legislation and repeal other foundational planning legislation from the previous dispensation.

3.3 The absorption and replacement of legislation within SPLUMA

SPLUMA was set to create the Spatial Planning and Land Use Management System in South Africa that accumulated and integrated the content of the Development Facilitation Act (DFA), Green Paper on Development and Planning (1999), the White Paper on Spatial Planning and Land-Use Management (2001) and the Draft Land Use Management Bill (2008) as the legislative platform for planning across the whole country (Schoeman, 2015:52). In parallel, the White Paper on Land Reform (1991) was a necessary first step to promote the Abolition of Racially Based Land Measures Bill in 1991

(that was enacted in June 1991). The Abolition of Racially Based Land Measures Act 108 of 1991 simultaneously repealed discriminatory laws related to land - this included the 1913 and 1936 Land Acts (Maleham, 2011:10; Schoeman, 2017:183,191; The Abolition of Racially Based Land Measures Act 108 of 1991). SPLUMA also repealed, replaced and partially absorbed the Removal of Restrictions Act 84 of 1967, the Physical Planning Act 88 of 1967, the Less Formal Township Establishment Act 113 of 1991, the Physical Planning Act 125 of 1991 as well as the DFA (Schoeman, 2015:44; SPLUMA, 2013).

3.3.1 The DFA and the SPLUM system

The DFA was repealed by SPLUMA (SPLUMA, 2013:72). SPLUMA absorbed and appropriately adjusted the general principles for land development of the DFA (Schoeman, 2017:183). Section 3 of the Development Facilitation Act 67 of 1995 (specifically S 3(1)(c)(i-vii) of the DFA) lists the developmental principles. SPLUMA included a landmark ruling from the Constitutional Court in terms of land use planning administration by adding Section 33(1) that declares the municipality as the body of first instance for land use planning and development applications (Steyn & Van Wyk, 2015:33; also see CoJ Metropolitan Municipality v Gauteng Development Tribunal and Others case number 89/09[2010] of 18 June 2010). Van Wyk and Oranje (2014:8-9) state that the Development Facilitation Act 67 of 1995 (DFA) was the first post-apartheid transformative legislation in the system of transformative legislation (Schoeman, 2015:44; Van Wyk & Oranje, 2014:8). However, the DFA posed many challenges that the government had not foreseen, which is understandable in the context in which it was promulgated. Some of these challenges are discussed below.

3.3.1.1 DFA and land use planning administrative authority incorporated in the SPLUM system

The DFA was intended to facilitate and quicken development as post-apartheid legislation as a temporary measure awaiting the passing of an all-inclusive piece of land use legislation (see Dykema v Malebane and Bela-Bela Local Municipality 2019 332/18 ZA 33 [Constitutional Court]). The DFA allowed for the establishment of Provincial Development Tribunals and enabled them to make land development decisions that were administered by the respective provincial administrations. Section 15 (1) of the DFA

allows for the establishment of developmental tribunals for each province within South Africa. Section 15 (9) of the DFA establishes the tribunal registrar as an officer who is in the service of the provincial administration in the capacity of land development, the law or administration. Municipalities typically administered land development applications and management decision-making of applications within the urban edge. The changing geographical structure of municipalities played a significant role in this development of the Land use planning system. This is discussed further in Section 3.4 that considers the change from the municipal areas that had only consisted of urban areas during the previous dispensation, to the wall-to-wall municipal areas that include all areas. In this transitional period, it caused a parallel process in terms of development approvals within a municipal area, coming after the restructured wall-to-wall municipalities. The parallel process also involved the amendments of related land use schemes (Steyn & Van Wyk, 2015:30,31). The complications of the land use scheme are discussed under Section 3.6. In the functioning of the Provincial Development Tribunals, it appeared at times as if developers were taking advantage of the DFA development tribunal process. It could be argued that there were developers who attempted to sidestep the local authority or get a possible negative outcome from a municipality in land development applications. One such example turned out to be a landmark ruling from the Constitutional Court, although the implementation of this ruling was not successful until the implementation of SPLUMA had taken place.

The landmark Constitutional Court ruling related to a matter between the City of Johannesburg Metropolitan Municipality (CoJ) and the Gauteng Development Tribunal that affirmed the Supreme Court of Appeals judgement. This judgement declared that Chapters V and VI of the DFA were unconstitutional and invalid⁹ because of the contradictory decision to make decisions on land use development and management applications. The matter related to the powers that the DFA attributed to the provincial tribunal to make decisions on applications that entailed rezonings and township establishments in terms of the Town Planning and Townships Ordinance 15 of 1986, which the municipality (CoJ) typically made decisions on. The CoJ did not agree with this

⁹ See CoJ Metropolitan Municipality v Gauteng Development Tribunal and Others Constitutional Court of South Africa Media Summary 89/09 ZACC 11 of 18 June 2010

dual system between the provincial administration and the local government administration of development or land use planning applications. The CoJ sought relief from the court to determine whether rezoning and the establishment of townships should be determined by the provincial government, the local government or both. The CoJ maintained that “municipal planning” was reserved for municipalities in terms of Section 156(1) of the Constitution (read with Part B of Schedule 4 to the Constitution). In accordance with this principle, the CoJ contested two development applications within its boundaries that had been approved by the Gauteng Provincial Tribunal. The CoJ attempted to appeal these decisions and the provincial tribunal opposed leave to appeal the approvals. The provincial tribunal was convinced that their authority to make decisions on urban and rural development in terms of land use and development applications was justified under Part A of the Schedule 4 of the Constitution. The judgement determined that “planning” was a function of “municipal planning” as indicated in the Constitution. Schedule 4 Part B of the Constitution of the Republic of South Africa 1996 indicates ‘Municipal Planning’ as a function of local government. It also established that “planning” in the context of a municipality included the zoning of land and the establishment of townships¹⁰. This would typically imply that it was the responsibility of the municipality to administer and make decisions on land use planning and development matters. Subsequently, the mentioned chapters of the DFA were ruled unconstitutional and invalid. However, to address the disruptive effect that this ruling would have on administration and development, the Constitutional Court suspended the order of invalidity for 24 months. The Court intended to provide time for Parliament to pass new legislation to replace the DFA and provide for a framework of legislation for spatial planning and land use management in South Africa. Additionally, the Court prohibited provincial tribunals from processing any new applications within the CoJ and the eThekweni Municipality (Centre for Environmental Rights, 2010). The rest of the country still functioned within this dual administrative system. The DFA was entirely repealed by the proclamation of SPLUMA (Steyn & Van Wyk, 2015:29; SPLUMA, 2013:72)¹¹, though

¹⁰ See CoJ Metropolitan Municipality v Gauteng Development Tribunal and Others Constitutional Court of South Africa Media Summary 89/09 ZACC 11 of 18 June 2010.

¹¹ Also see Constitutional Court Media Summary of CoJ Metropolitan Municipality v Gauteng Development Tribunal and Others 89/09 SA 11 CC of 18 June 2010

the implementation of SPLUMA came into operation on the 1st of July 2015¹². It would only be through the implementation of SPLUMA that the Constitutional Court ruling affected the whole country under the auspices of Section 33(1) of SPLUMA. This was the long-awaited proclamation and implementation of national legislation that established the municipality as the body of first instance for all land development applications and has the authority to make subsequent decisions¹³. This resolves the dual administrative system and the complications as addressed in the ruling of the Constitutional Court. The period between the Constitutional Court ruling and the implementation of SPLUMA was a time-anticipating replacement legislation for all municipal and provincial administrations.

The three-year time, 2010-2013, was a period where the regulation of municipal planning was caught up in a forced state awaiting the promulgation of legislation that would conclude the transition from the DFA to SPLUMA¹⁴. Land use planning administration and decision-making were still managed between the provincial government and the local government during this time, and thus was a fragmented system (Kleynhans, 2024; Schoeman, 2015:53; Schoeman, 2017:183; Van Wyk & Oranje, 2014:8). Administration of land use development applications of properties located outside the urban edge would be managed and administered by the provincial government. Administration of land use development applications of properties located within the urban edge would typically be administered by the municipality (Kleynhans, 2024). The exception to this dual system was of course the CoJ Metropolitan Municipality and the eThekweni Metropolitan Municipality, where only the municipality administered and decided on the planning applications. The Mpumalanga Provincial Government, specifically, had standardised application forms that relied on Section 6[1], read with Section 8[1][a] of the Physical Planning Act 88 of 1967 and read with Section 36 of the Physical Planning Act 1991 to

¹² See Proclamation 26 in Government Gazette 38828 of 27 May 2015 is a proclamation by the president of the RSA that determines the date of implementation of SPLUMA in terms of SPLUMA S 61.

¹³ See Constitutional Court Media Summary of CoJ Metropolitan Municipality v Gauteng Development Tribunal and Others 89/09 SA 11 CC of 18 June 2010: Centre for Environmental Rights (CER) 2010.

¹⁴ See Dykema v Malebane and Bela-Bela Local Municipality 2019 332/18 ZA 33 (CC); Tiaan Kleynhans Chief Town and Regional Planner Mpumalanga Department of Co-operative Governance and Traditional Affairs.

change the use of land within a controlled area¹⁵. These applications had to comply with the general principles in Chapter 1 of the DFA and/or the Spatial Development Framework of the related local municipality. Township establishment applications made by the Less Formal Township Establishment Act 113 of 1991, were administered by the provincial government¹⁶. The transition between the administration of the local and provincial government developed into the SPLUMA framework that secures the land use administration under the local government.

The tangible long-anticipated change in planning legislation was presented in the Land Use Management Bill, published in 2008. This was followed by the Draft Spatial Planning and Land Use Management Bill in 2010, which developed into the Spatial Planning and Land Use Management Bill 2012 and then effectively into the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). The administration from the provincial government in terms of land use planning was only transferred to the municipalities, physically, after the implementation of the SPLUMA. The registers held by the provincial government had to be processed for the provincial archives to release the physical records to the municipality, which had to agree to the receipt of the physical records. In the Province of Mpumalanga, this physical transfer formed part of the process of the development and establishment of the new SPLUMA wall-to-wall land use schemes. The physical records had to be incorporated into the new land use scheme register as required by SPLUMA (Section 25(2)(c) of SPLUMA, 2013:36).

The DFA was guided by development principles as required by the 1996 Constitution (Schoeman, 2017:183). After the DFA had been deemed unconstitutional, the development principles were still used to motivate development applications until SPLUMA had been promulgated (SPLUMA, 2013:72; Steyn and Van Wyk, 2015:29).

¹⁵ See Mpumalanga Provincial Government Department of Co-operative Governance and Traditional Affairs Application for change in land use/business rights/rural residential/excision of holdings 2014.

¹⁶ See Section 1 of the Less Formal Township Establishment Act 113 of 1991.

SPLUMA replaced the development principles with its own, but similar in principle, development principles as mentioned in section 3.3¹⁷.

The DFA played a significant role in the development of the land use planning and development administration, in the re-thinking and structuring of administration as well as the advancement of an understanding of what land use planning was. The integration of the ordinances and the re-demarcated municipal areas also played a significant role in the development of the land use planning and management system.

3.3.1.2 DFA development principles absorbed in the SPLUM system

The DFA was intended to facilitate and quicken development as post-apartheid legislation as a temporary measure awaiting the passing of an all-inclusive piece of land use legislation. The DFA allowed for the establishment of Provincial Development Tribunals and enabled them to make land development decisions that were administered by the respective provincial administrations. Municipalities typically administered land development applications and did management decision-making of applications within the urban edge. The changing geographical structure of municipalities played a significant role in this development of the Land Use Planning System. This is discussed further in Section 3.4, 3.6 and 3.7, that considers the change from the municipal areas that had only consisted of urban areas during the previous dispensation, to the wall-to-wall municipal areas that include all areas. In this transitional period, it caused a parallel process in terms of development approvals within a municipal area, after the restructured wall-to-wall municipalities. The parallel process also involved the amendments of related land-use schemes. The complications of the land-use scheme are discussed under Section 3. In the functioning of the Provincial Development Tribunals, it appeared at times as if developers were taking advantage of the DFA development tribunal process. It could be argued that there were developers who attempted to sidestep the local authority or possible negative outcome from a municipality in land development applications. One such example turned out to be a landmark ruling from the Constitutional Court, although

¹⁷ Ch 2 S 7 of SPLUMA indicates the developmental principles. Also see Laubscher et al. SPLUMA: A Practical Guide 63-85 for a more detailed discussion on the development principles; Section 3 of the Development Facilitation Act 67 of 1995. It is specifically S 3(1)(c)(i-vii) of the DFA that lists the development principles (also see Schoeman, 2017:183).

the implementation of this ruling was not successful until the implementation of SPLUMA had taken place.

The landmark Constitutional Court ruling related to a matter between the City of Johannesburg Metropolitan Municipality (CoJ) and the Gauteng Development Tribunal, that affirmed the Supreme Court of Appeals judgement. This judgement declared that Chapters V and VI of the DFA were unconstitutional and invalid because of the contradictory authority to make decisions on land use development and management applications. The matter related to the powers that the DFA attributed to the provincial tribunal to make decisions on applications that entailed rezonings and township establishments in terms of the Town Planning and Townships Ordinance 15 of 1986, which the municipality (CoJ) typically made decisions on. The CoJ did not agree with this dual system between the provincial administration and the local government administration of development or land use planning applications. The CoJ sought relief from the court to determine whether rezoning and the establishment of townships should be determined by the provincial government, the local government or both. The CoJ maintained that “municipal planning” was reserved for municipalities in terms of Section 156(1) of the Constitution, read with Part B of Schedule 4 of the Constitution. In accordance with this principle, the CoJ contested two development applications within its boundaries that were approved by the Gauteng Provincial Tribunal. The CoJ attempted to appeal these decisions and the provincial tribunal opposed leave to appeal the approvals. The provincial tribunal was convinced that their authority to make decisions on urban and rural development in terms of land use and development applications was justified under Part A of the Schedule 4 of the Constitution. The judgement determined that “planning” was a function of “municipal planning” as indicated in the Constitution. It also established that “planning” in the context of a municipality included the zoning of land and the establishment of townships. This would typically imply that it was the responsibility of the municipality to administer and make decisions on land use planning and development matters. Subsequently, the mentioned chapters of the DFA were ruled unconstitutional and invalid. However, to address the disruptive effect that this ruling would have on administration and development, the Constitutional Court suspended the order of invalidity for 24 months. The Court intended to provide time for Parliament to pass new legislation to replace the DFA and provide for a framework of legislation for

spatial planning and land use management in South Africa. Additionally, the Court prohibited provincial tribunals from processing any new applications within the CoJ and the eThekweni Municipality. The rest of the country still functioned within this dual administrative system. The DFA was entirely repealed by the proclamation of SPLUMA, though the implementation of SPLUMA came into operation on 1 July 2015. It would only be by the implementation of SPLUMA that the Constitutional Court ruling affected the whole country within Section 33(1) of SPLUMA. This was the long-awaited proclamation and implementation of national legislation that established the municipality as the body of first instance for all land development applications and has the authority to make subsequent decisions. This resolves both the dual administrative system and the complications as addressed in the ruling of the Constitutional Court. The period between the Constitutional Court ruling and the implementation of SPLUMA was a piece of time-anticipating replacement legislation for all municipal and provincial administrations.

The three-year period, 2010-2013, was a period where the regulation of municipal planning was caught in a forced state awaiting the promulgation of legislation that would conclude the transition from the DFA to SPLUMA. Land use planning administration and decision-making were still managed between the provincial government and the local government during this time and thus was a fragmented system. Administration of land use development applications of properties located outside the urban edge would be managed and administered by the provincial government. Administration of land use development applications of properties located within the urban edge would typically be administered by the municipality. The exception to this dual system was of course the CoJ Metropolitan Municipality and the eThekweni Metropolitan Municipality, where only the municipality administered and decided on the planning applications. The Mpumalanga Provincial Government, specifically, had standardised application forms that relied on Section 6[1], read with Section 8[1][a] of the Physical Planning Act 88 of 1967 and read with Section 36 of the Physical Planning Act 1991 to change the use of land within a controlled area. These applications had to comply with the general principles in Chapter 1 of the DFA and/or the Spatial Development Framework of the related local municipality. Township establishment applications made by the Less Formal Township Establishment Act 113 of 1991 were administered by the provincial government. The transition from the administration of the local and provincial government

developed into the SPLUMA framework that secures land use administration under the local government.

The tangible long-anticipated change in planning legislation was presented in the Land Use Management Bill, published in 2008. This was followed by the Draft Spatial Planning and Land Use Management Bill in 2010, which developed into the Spatial Planning and Land Use Management Bill 2012 and then effectively into the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). The administration from the provincial government in terms of land use planning was only transferred to the municipalities, physically, after the implementation of SPLUMA. The registers held by the provincial government had to be processed for the provincial archives to release the physical records to the municipality, which had to agree to the receipt of the physical records. In the Province of Mpumalanga, this physical transfer formed part of the process of the development and establishment of the new SPLUMA wall-to-wall land use schemes. The physical records had to be incorporated into the new land use scheme register as required by SPLUMA.

The DFA was guided by development principles as required by the 1996 Constitution. After the DFA had been deemed unconstitutional, the development principles were still used to motivate development applications until SPLUMA had been promulgated. SPLUMA replaced the development principles with its own, but similar in principle, development principles as mentioned in Section 3.3.

The DFA played a significant role in the development of the land use planning and development administration, in the re-thinking and structuring of administration as well as the advancement of an understanding of what land use planning was. The integration of the ordinances and the re-demarcated municipal areas also played a significant role in the development of land use planning and management system.

3.3.2 Less Formal Township Establishment Act 113 of 1991 and SPLUMA

The Less Formal Township Establishment Act 113 of 1991, was repealed by the promulgation of SPLUMA in its Schedule 3, section 59 (SPLUMA, 2013:72). The Act, when it was promulgated, was administered by the Provincial Government. It was enacted to facilitate and fast track development and the formalisation of informal

residential settlements that related directly to the creation of security of land ownership (Barry, 2003; RSA, 1991:2). This Act related to township establishments outside development areas in what could be regarded as peri-urban areas (Barry, 2003), although the act specifically mentions use of land by tribal communities with communal forms of residential settlements (in this study, rather referred to as Traditional Authorities) (RSA, 1991:2). Peri-urban areas were regarded as the area between the urban and the rural areas (Barry, 2003), although this Act was also used in the formalisation of rural areas that could be seen, for example, all around Dr J.S Moroka, Thembisile Hani-, Nkomazi and Bushbuckridge Municipal areas, which held vast and largely traditional areas. A typical example of such a township establishment is contained in the Provincial Government Gazette of 21 May 2010, that advertised the application for such an application in the Bushbuckridge Municipal Area (Department of Agriculture, Rural Development and Land Administration for Bushbuckridge Local Municipality, 2010:12). Below is an excerpt from the advertisement.

Besonderhede van die aansoek lê ter insae gedurende gewone kantoorure by die kantoor van die Stadsklerk: Malelane Stadsraad, Parkstraat No. 9, Malelane, vir 'n tydperk van 28 dae vanaf 18 Mei 2010.

Besware teen of verhoë ten opsigte van die aansoek moet binne 'n periode van 28 dae vanaf 18 Mei 2010, skriftelik by of tot die Munisipale Bestuurder by bovermelde adres of by Privaatsak X101, Malelane, 1320, ingedien of gerig word.

Adres van agent: Esselens Engelbrechts Ing., Posbus 652, Komatipoort, 1340. Tel: (013) 793-7783. Verw: JCE/LM/MK8.10.

21-28

NOTICE 123 OF 2010

NOTICE OF APPLICATION FOR TOWNSHIP ESTABLISHMENT

NOTICE OF APPLICATION FOR THE ESTABLISHMENT OF A TOWNSHIP IN TERMS OF THE LESS FORMAL TOWNSHIP ESTABLISHMENT ACT, 1991 (ACT 113 OF 1991)

We, Sisonke Development Planners, hereby gives notice in terms of the Less Formal Township Establishment Act, 1991 (Act 113 of 1991), that we have applied Department of Agriculture, Rural Development and Land Administration for the formalization of several townships, with RDP housing in Bushbuckridge Local Municipality. The townships under the process of formalization are as follows:

1. Kildare-C on the farm Kildare 226-KU,
2. Agincourt on part of the adjacent farms Agincourt 254-KU and Newington 255-KU,
3. Mthunzini on Portion 1 of the farm Kasteel 231-KU,
4. Orpen Gate on Portion 12 of the farm Acornhoek 212-KU,
5. Marite on the farm Marite 301-KU,
6. Alexandra on the farm Alexandria 302-KU,
7. Ludlow on the farm Ludlow 277-KU, and
8. Eglington on a portion of Portion 7 of the farm Eglington 225-KU.

Particulars of the applications will lie for inspection during normal office hours, at the office of The Department of Agriculture, Rural Development and Land Administration, Building 6, No. 7 Government Boulevard, Riverside Park, Nelspruit, 1200 RSA.

Objections to or representation in respect of the applications must be lodged or handed in writing to: The Department of Agriculture, Rural Development and Land Administration at the above address or at Private Bag X11219, Nelspruit, 1200, within a period of 28 days from the date of this notice.

The physical planning and design of the proposed townships will be as follows:

Name of town: **Mthunzini.**

Total number of erven: 209.

Land uses: Residential: 206 erven. Business: 1 erven. Public Open Space: 2 erven.

Name of town: **Orpen Gate.**

Total number of erven: 1 131.

Land uses: Residential: 1 097 erven. Business: 14 erven. Public Open Space: 7 erven. Municipal: 3 erven.

Name of town: **Marite.**

Total number of erven: 343.

Land uses: Residential: 333 erven. Public Open Space: 6 erven.

Name of town: **Alexandria.**

Total number of erven: 240.

Land uses: Residential: 236 erven. Business: 1 erven. Public Open Space: 2 erven. Community facility: 2 erven.

Name of town: **Ludlow.**

Total number of erven: 402.

Figure 16: Excerpt from a typical advertisement for a Township Establishment application

Source: Provincial Gazette, 2010

Above is an excerpt from the advertisement of a typical Township Establishment application made in terms of the Less Formal Township Establishment Act 113 1991

(Department of Rural Development and Land Administration, Mpumalanga, for Bushbuckridge Local Municipality, 2010: 12).

The excerpt above contains the advertisement of the Township Application in terms of this Act and refers here to the formalisation of multiple townships that would result in RDP housing for the identified beneficiaries within the Bushbuckridge Local Municipality. It is of use to note that this was administered by the Department of Agriculture, Rural Development and Land Administration at the Mpumalanga branch in the then Nelspruit, which is the capital of the Mpumalanga Province. The responsibilities of the land administration, together with the land use registers, had to move to the relevant municipalities' administration after 1 July 2015, when SPLUMA was implemented. In consideration of this change of administration, and the repeal of this act together with other mentioned act, the administrative burden on the typical Category B municipalities increased in leaps and bounds, especially in areas where there were previous homelands or Traditional Authorities. SPLUMA provided for the inclusion of informal areas, perhaps not to the extent hoped for, but it still did, taking the leap in repealing Act 113 of 1991 and placing the same responsibilities on the local authority through SPLUMA.

The development principles from Section 7 of SPLUMA, as well as Section 24, related to the Land Use Scheme, require all Land Use Schemes to include flexible provisions and an incremental introduction to land use for the management of informal settlements, deprived areas, as well as former homeland areas. Furthermore, the land development procedures anticipated in the wall-to-wall Land Use Scheme and the related By-Law, should include provisions to accommodate secure land ownership and incremental upgrading of informal areas (SPLUMA, 2013:18). Similarly, SPLUMA requires the SDFs and policies to include all informal settlements, deprivation areas, as well as former homeland areas as well (SPLUMA, 2013:18,24). SPLUMA, in Schedule 1, stipulates matters that should be addressed by Provincial Government that include that provision should be made for procedures relevant to the approval of applications for the formalisation or incremental upgrading of an informal settlement, and that further includes securing land ownership, the provision of services and land use control in the identified areas (SPLUMA, 2013:64).

3.3.3 Removal of Restrictions Act and SPLUMA

The removal of restrictive conditions typically refers to the removal of amendment of obsolete conditions on a Deed of Transfer or Title Deed that might restrict the owner of a property to a certain activity or obligation or hold liable for what is indicated on the relevant Title Deed. The Removal of Restrictions Act 84 of 1967 was repealed by the promulgation of SPLUMA, effective on 1 July 2015. This act was administered by the Provincial Government during the time of use of this act. The structures of the administration also changed significantly during the time this act was used. During the promulgation of this act the Republic of South Africa was divided into four provinces. Then, after April 1994, the Republic was divided into nine provinces that absorbed the former homelands or Traditional Areas. Furthermore, another structural change came with the change of land use administration from the provincial government to the municipalities. This act was purposed to amend, suspend or remove certain restrictions and obligations related to land (Removal of Restrictions Act of 1967).

SPLUMA absorbed the functions of the Removal of Restrictions Act 84 of 1967 in its Schedule 1 related to matters to be addressed by provincial legislation, in that it requires the development and promulgation of legislation that will regulate the removal of restrictive conditions that are related to provincial planning and municipal planning (President of the Republic of South Africa, 2013:64). This Schedule 1 sets out many different requirements for planning processes that include the removal of restrictions in the necessary planning framework. Furthermore, it requires the repealing or amendment of provincial legislation that includes the repealing of the old provincial ordinances. The ordinances can only be repealed by provincial legislation as it is provincial legislation.

Previously, applications for the removal of restrictive conditions, before 1 July 2015, were administered by the provincial government in terms of the repealed act. The implementation of SPLUMA meant that all removal of restrictive conditions would be administered by the municipality. There are certain provinces that have an act related to the removal of restrictions, such as Gauteng with the Gauteng Removal of Restrictions Act 3 of 1996. A typical example of a removal of restriction application in the City of Johannesburg Metropolitan Municipality would make use of the City of Johannesburg Municipal Planning By-Law, 2016, as amended in 2024, to remove certain restrictions in

terms of Section 41 of the by-law, with Section 11 explaining the procedure (City of Johannesburg Metropolitan Municipality, 2016: 64,38).

3.3.4 The Physical Planning Act 88 of 1967, the Physical Planning Act 125 of 1991 and SPLUMA

The Physical Planning Act 88 of 1967, was purposed to manage physical planning and the use of the government's resources that include the condition and control of the zoning and sub-division of specifically industrial purposed land. This also included the establishment of factories and extending factories, as well as restricting sub-divisions in controlled areas (Physical Planning Act of 1967:90).

The Physical Planning Act 125 of 1991 was intended to promote coordinated environmental planning and use of the country's resources and to provide control of the zoning and sub-division of land for industrial purposes, to establish controlled areas, reserve land for certain purposes, place restrictions on sub-divisions and determining the purposes land could be used for (Physical Planning Act 125 of 1991).

Both the Physical Planning Acts were repealed by SPLUMA and their functions absorbed into the framework set by it, which includes all control, sub-division measures, industrial uses and more, that can be prescribed and refined by the related municipality and its by-laws and land use schemes.

3.4 The provincial ordinances and the changing landscape of the provinces after the declaration/promulgation of the Constitution and the eventual relationship with SPLUMA in its transition

The establishment of the nine provinces of South Africa had a significant influence on the development of the Land Use Planning System as it is today. The formation of the provinces and the land use planning legislative background that had been fundamentally influenced by the provincial legislation prompts a discussion of the history of land use planning legislation. Though the provincial ordinances from the previous dispensation directed land use planning and development within the urban edge or urban areas, the related applications were authorised by the municipality. The Town Planning and Townships Ordinance 15 of 1986 establishes that the local authority prepares and administers the town planning scheme (today better known as Land Use Scheme), noted

that the scheme was purposed for a particular urban area (previous dispensation municipal structure). This ordinance was valid for the Gauteng, Mpumalanga, Limpopo and North West Provinces as explained below; The Townships Ordinance 9 of 1969 for the Province of the Free State established the local authority and is similarly responsible for the administration of the land use scheme and township establishments that would be submitted to the provincial government. Other ordinances mentioned in section 3.4 have similar structures and applications. The national legislation related to land use planning was largely administered by the provincial government and was typically applicable to areas outside the urban edge. The provincial government administered land use management on areas outside the urban edge in terms of legislation that includes the Less Formal Township Establishment Act 113 of 1991 (repealed), the Upgrading of Land Tenure Rights Act 112 of 1991, Physical Planning Act 88 of 1967 (repealed), the Physical Planning Act 125 of 1991 (repealed), the Advertising on Roads and Ribbon Development Act 21 of 1940, the Interim Protection of Informal Land Rights Act 31 of 1996 (which was supposed to lapse after 12 months after promulgation), among other legislation. Thus, a dual functioning land use planning and development administration. The previous dispensation's provincial boundaries and structures were established during 1910, when the Union of South Africa was established by the South Africa Act of 1909 that was an act from the parliament of the United Kingdom. It united the four British Colonies known as the Orange River Colony, Transvaal, Natal and the Cape of Good Hope (Devenish, 2011:108). The colonies would become the Provinces of the Union and then later the Republic of South Africa in 1961. The Republic of South Africa Constitution Act 32 of 1961 constituted the Union into the Republic of South Africa, which was independent but constitutionally loyal to the Crown (United Kingdom). Pre-1994 planning legislation was also largely influenced by English planning legislation forms. The provinces were known as the Orange Free State, Transvaal, the Cape Province and Natal (Devenish, 2012:2). These demarcations remained until 1994. These provinces formed the foundation of planning legislation as per the provincial ordinances for the urban areas. As mentioned, the provincial ordinances were used for land use planning and development applications until new legislation was promulgated (Bronstein, 2015:649) in line with SPLUMA after its implementation on the 1st of July 2015. Long before SPLUMA was developed, the geographical grouping of these provinces had been reconsidered.

The re-demarcation of provinces was established by the Interim Constitution of 1994, but founded in the Constitution of 1996¹⁸ and indicates(d) the nine provinces of South Africa: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North-West and the Western Cape, which replaced the four old provinces on which the planning ordinances had been based. The promulgation of SPLUMA intended to generate provincial legislation that would replace the previous ordinances (Van Wyk and Oranje, 2014:8-9); however, this did not happen. The intention and certainty of the promulgation of nine provincial spatial planning Acts in terms of SPLUMA are indicated here in 2014 for purposes of addressing spatial divisions of the apartheid regime and cultivating comprehensive approaches to land development in municipalities that include all areas within it. The general result was that most municipalities were prompted to formulate SPLUMA-aligned municipal by-laws that would address the planning system as per SPLUMA and establish processes and procedures to accommodate the Land use planning system. The nine provinces of the democratic government each had their respective relevant legislative and institutional contexts that represented the requirement that the whole territory of South Africa should be included in a municipality¹⁹. This included the incorporation of the four independent and self-governing states Transkei, Ciskei, Bophuthatswana and Venda into its administration after 1994. They were previously known as Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa. The mentioned administrative systems had to be integrated into the municipalities and fell under the authority of such municipalities²⁰. That means that all land use planning and development decisions would be made by the respective municipality that they resorted under. This caused difficulty at times within the administrations due to debates about authority in decision-making on land use matters. SPLUMA makes provision for and requires the representation of traditional councils within its decision-making processes. Section 23(2) of SPLUMA provides that subject to section 81 of the Local Government: Municipal Structures Act 117 of 1998 and the Traditional

¹⁸ See Schedule 1 A of the Constitution of the Republic of South Africa 1996.

¹⁹ See Chapter 7 Section 151(1) of the Constitution of 1996 1331(2).

²⁰ See National Treasury 1994 Chapter 1 Profile of the Provinces 3 June 1994, the Interim Constitution of 1994 and the Constitution of 1996.

Leadership and Governance Framework Act 41 of 2003, a municipality in the performance of its duties in terms of the land use management chapter must allow the participation of traditional councils. The issue of land tenure will be discussed below - it relates to difficulty in the land use scheme and register as well as the processing of applications.

The consideration of the formation and inclusions of the provinces is important for the demarcation and reflection of the inclusivity of the wall-to-wall local municipal areas and its administration as it explains some of the considerations that are and should be included in the development of the land use management system.

The transitioning of the administrative systems per province is indicated below (National Treasury, 1994; Municipal Demarcation Board, 2018; Stats SA, 1991):

- The administrative areas that were integrated within the Mpumalanga Province include KaNgwane, which consisted of three administrative areas; the majority of KwaNdebele, which consisted of a total of three administrative areas; part of the Transvaal Provincial Administration; and 20 municipalities. Mpumalanga transitioned to 20 municipal areas, that includes three district municipalities. Before SPLUMA systems were put in place, the Town-Planning and Townships Ordinance 15 of 1986 and the Division of Land Ordinance 20 of 1986 were generally used for planning applications.
- Gauteng Province had to integrate administrative systems of the Transvaal Provincial Administration as well as 26 municipalities. It transitioned to 11 municipalities that included three metropolitan municipalities and two district municipalities. Before SPLUMA systems came into effect, the Town-Planning and Townships Ordinance 15 of 1986 and the Division of Land Ordinance 20 of 1986 applied to this Province. It established the Gauteng Planning and Development Act 3 of 2003, which repealed the ordinances²¹.
- Limpopo Province included Venda, Lebowa, which consisted of 11 administrative areas; Gazankulu, which had six administrative areas; part of Transvaal Provincial

²¹ See Schedule Laws Repealed in Gauteng Planning and Development Act 3 of 2003: 39.

Administration; and 10 municipalities. Limpopo transitioned to 27 municipalities, which included five district municipalities. Before the SPLUMA system came into effect, the Town Planning and Townships Ordinance 15 of 1986 and the Division of Land Ordinance 20 of 1986 were generally used for planning applications.

- The North-West Province included the administrations of the majority of Bophuthatswana, viz, part of KwaNdebele, part of the Transvaal and Cape Provincial Administrations and 15 municipalities. It transitioned to 22 municipalities, which included four district municipalities. Before SPLUMA systems came into effect, the Town-Planning and Townships Ordinance 15 of 1986 and the Division of Land Ordinance 20 of 1986 were generally used for planning applications.

- The Western Cape involved the integration of part of the Cape Provincial Administration and 41 municipalities. It transitioned to 30 municipalities, which include a metropolitan municipality and five district municipalities. The Land Use Planning Ordinance No. 15 of 1985 (LUPO) was relevant for the province and was repealed by the Land Use Planning Act 3 of 2014²².

- The Eastern Cape Province integrated the administration of Transkei; Ciskei; part of Cape Provincial Administration; and 41 municipalities. It transitioned to 39 municipalities, which included two metropolitan municipalities and six district municipalities. The Land Use Planning Ordinance No. 15 of 1985 (LUPO) applied to the province and was repealed by the Repeal of Local Government Laws Eastern Cape Act 1 of 2020²³.

- The Northern Cape Province included the administration of part of the Cape Provincial Administration and 23 municipalities. It transitioned to 31 municipalities, that included five district municipalities. The Land Use Planning Ordinance No. 15 of 1985

²² See Schedule Laws Repealed by Section 77 in the Land Use Planning Act 3 of 2014.

²³ See Schedule Repeal of Local Government Laws Eastern Cape Act 1 of 2020.

(LUPO) applied to the Province and was repealed by the Northern Cape Planning and Development Act 7 of 1998²⁴.

- The Free State Province integrated the administration of QwaQwa, which consisted of one administrative area; the Orange Free State Provincial Administration; part of Bophuthatswana; and 50 municipalities. It transitioned to 23 municipalities that included one metropolitan municipality and four district municipalities. The Townships Ordinance 9 of 1969 was relevant for this province.
- KwaZulu-Natal included the administration of KwaZulu, which consisted of 26 administrative areas; the Natal Provincial Administration; and 39 municipalities. It transitioned to 54 municipalities that included one metropolitan municipality and 10 district municipalities. The Town Planning Ordinance 27 of 1949 applied (Van Wyk, 2013:99) and was replaced by the KwaZulu Natal Planning and Development Act 6 of 2008²⁵ (which came into operation on 1 May 2010) (Van Wyk, 2013:99; Van Wyk, 2020:38). This Act was regarded as progressive at the time. It replaced the Town Planning Ordinance of 1949 and amendments to this ordinance.

The different administrative bodies that were integrated into the municipalities had different land ownership administrations.

3.5 The complication of land tenure and SPLUMA

Land is the common entity vested in all planning matters, specifically land use planning and development administration. Land ownership is protected under the Constitution's Property Clause (Van Wyk, 2020:187). Land use rights are directly linked to property. Land use rights are registered on a record held by municipalities as required by SPLUMA to keep a record of all amendments of the scheme. Land use planning and development applications are to be submitted by the owner of a property or a person or entity that represents the owner and/or have permission from the owner to apply. Written legal records from the rightful owner are needed as proof. This includes affidavits, company

²⁴ See Schedule C Northern Cape Planning and Development Act 7 of 1998 54

²⁵ See KwaZulu-Natal Planning and Development Act 6 of 2008; Lexis Nexus 2004.

resolutions, signed letters confirmed by a commissioner of oaths et cetera. This complicates the keeping of a record of amendments when different types of land tenure are present within a municipal area. It is further complicated by the consideration of applications in a system that firmly recognises ownership in terms of a title deed.

Land tenure was and still is a complicated issue that leaves people residing in some of the mentioned previous 'homeland' or trust areas without security of tenure. The Development Trust and Land Act established the land administrative system for 'permission to occupy' (PTO), which had its own administrative system (Du Plessis, 2018:5). A PTO in its integration with the strict title deed registration for ownership of land creates vulnerability for holders of these rights (Du Plessis, 2018:6). The Communal Land Rights Act 11 of 2004 (CLaRA) (Van Wyk, 2013:100) was intended to provide legally secure tenure and land use rights in the areas that did not have secure tenure in the form of title deeds and were and are mostly owned by the national government and to a smaller extent the provincial government. CLaRA was eventually eliminated in its entirety by the Constitutional Court (Clark & Luwaya, 2017:11). Other related legislation to accomplish more secure tenure or ownership included the Upgrading of Land Tenure Rights Act 112 of 1991 and the Interim Protection of Informal Land Rights Act 31 of 1996 (IPILRA). The Upgrading of Land Tenure Rights Act 112 of 1991 was intended to secure the ownership of certain rights and specifically assist in the transfer of ownership from the national or provincial government to the traditional authority. IPILRA was intended to protect people's land rights temporarily and provides the right to occupy, use and access land within the former homelands (Anon, 2023). IPILRA did not have the effect it was intended to have and secured rights for very few (Clark & Luwaya, 2017:9). This was/is a tedious process to transfer the land owned by the national or provincial government to the local government to establish townships and register title deeds. The process is commonly referred to as the Transfer of State Land Applications or Processes. This process was administered and had to be approved by the Department of Rural Development and Land Reform (DRDLR) for many years. The applications were/are done in terms of IPILRA. After a normally long process, the land is transferred to the municipality. The application to the DRDLR is accompanied by a proposal for a Township Establishment together with its motivation, a site development plan, the needed resolutions and consent from the relevant community in terms of IPILRA and other necessary documents. The property to

be transferred will not entail vast areas of land or farm portions. It will only transfer the area that is indicated on the proposed township establishment application, with a small border around the proposed development area. The related area will be sub-divided from the original farm portions and only that area will be transferred to the municipality. The transfer of state land does not happen as frequently as it should to enable registered individual ownership by title deed. The Dr JS Moroka Local Municipality in Mpumalanga does not own the land that their administrative building is on, for example. The land is owned by the state that communities are living on and expressing land uses follows a system that is not easily integrated into the SPLUMA system. The way the land use register and the process of applications for these areas could be described could be said to be an experiment. There are no clear guidelines or institutional processes on how to address this other than the transfer of state land processes. Other legislation that assisted in the transformation to the development of SPLUMA should be discussed briefly to consider the effort that went into the process of legislative development for a new land use planning system.

3.6 Land Use Schemes and their transformation towards the SPLUM system

Town Planning Schemes: Land use planning within the urban edge (urban areas)

The Land Use Scheme as known in terms of SPLUMA, used to be termed “Town Planning Schemes”. Section 24(1) SPLUMA indicates the requirement for a single land use scheme for its entire area. Section 25(1) indicates that this land use scheme must determine its use and development. Town Planning Schemes were typically proclaimed or officially declared in terms of the relevant Provincial Ordinance. The Land Use and Planning Regulations as per Government Notice R1888 of 1990, determined procedures for land use schemes (Van Wyk, 2013:95). The Scheme itself would also be approved by the provincial government. A typical example is the Nelspruit Town Planning Scheme of 1990 which was advertised as an amendment to the Nelspruit Town Planning Scheme 1/1952 in terms of the Town Planning and Townships Ordinance of 1965 by the Minister of Budget and Local Government House of Assembly. Another example is the Kinross Town Planning Scheme of 1980 that had a clear stamp of approval from the Director of the Local Government of the Provincial Administration and was signed by the director as a true copy. The Marloth Park Town Planning Scheme of 2000, for example, was

promulgated under the provision of Section 18 of the Town Planning and Township Ordinance 15 of 1986. This ordinance was relevant for the Provinces of Mpumalanga, Gauteng, Limpopo and the North-West, which together formed the Transvaal Province from the previous dispensation. Municipalities would administer the land use and development applications submitted to them through their planning department. Town Planning Schemes would only cover the area of a town within the urban edge, which could be seen as the boundary of a municipality. Town Planning Schemes were typically centred on urban areas (with an urban edge). However, it could be argued and should be acknowledged that the term 'urban' may vary and may not necessarily be perceived as the same coherent concept or 'idea' but is formulated through integrated levels and layers of informed thinking (Steyn, 1989:9-27). It is a complex boundary that needs to be examined in a context. The administration of each urban area, or the previous dispensation's 'town' or 'city', that has its subsequent Town Planning Scheme, would typically involve their own processing of land use planning and development applications.

This means that, usually, each urban area would have its own administration for land use planning applications. Each administration would have planners and administrators managing the applications within the urban edge.

3.6.1 Sub-divisions outside the urban edge and SPLUMA

Outside the urban edge, the sub-division as part of land use planning and development administration was applied for in terms of the sub-division of Agricultural Land Act 70 of 1970 (SALA)²⁶. This Act, which came into operation on 2 January 1971, regulated the sub-division for agricultural land before the implementation of SPLUMA. This Act was not repealed, although the government published an Act in 1998 that repealed the whole Act, but the Presidency did not publish the operational date for it. The reason for this was that

²⁶ The sub-division of Agricultural Land Act 70 of 1970 (SALA) RSA, 1970, which came into operation on 2 January 1971, was used to sub-divide all agricultural land before the implementation of SPLUMA but was not repealed (the government published an Act in 1998 that repealed the whole act, but the presidency never proclaimed the operational date).

there was no other legislation to replace SALA²⁷. The Preservation and Development of Agriculture Land Bill (PDALB) was introduced to the National Assembly in 2021, and it was purposed to replace SALA (Fasken, 2021). Fasken (2021) indicates that the PDALB was introduced to the National Assembly on 22 April 2021 by the Minister of Agriculture, Land Reform and Rural Development where transitional arrangements were established. Currently, an application in terms of SPLUMA²⁸ is required to apply for any sub-division (Van Wyk, 2020:335) via the Department of Agriculture, Land Reform and Rural Development, but specifically the Department of Agriculture. The permission of the Minister of the Department of Agriculture is still required when sub-divisions on agricultural land are considered (Fasken, 2021). This department is still mandated to protect the sub-division of agricultural land (Fasken, 2021; Van Wyk, 2020:336) and prevent the fragmentation of agricultural land (Fasken, 2021). Similarly, the Department of Environment, Forestry and Fisheries is responsible for the protection of the environment in terms of the National Environmental Management Act 107 of 1998 (NEMA). Schedules 1 and 2 of NEMA are of particular interest in the overlapping of planning applications that might affect the environment and relates to the management of the environment.

3.6.2 Land Use schemes: Wall-to-wall land use planning in urban and rural areas

Outside the urban edge, the provincial government used to manage the land use planning and development applications. This administration was largely based on the Physical Planning Act of 1967 and the Physical Planning Act of 1991 related to a controlled area. An example is the Mpumalanga Provincial Government Department of Co-operative Governance and Traditional Affairs' application form to change land use in a controlled area states the foundation of Section 6(1) read with Section 8(1)(a) of the Physical Planning Act 88 of 1967 read together with the Physical Planning Act of 1991. The

²⁷ Fasken (2021) raised the question as to why the Repeal Act was not implemented and the answer from the Department of Agriculture, Land Reform and Rural Development (DALRRD) on the 11th of February 2020 was that there was no other legislation to replace it.

²⁸ S 35 (4) read together with S 41 (b) of the Spatial Planning and Land Use Management Act 16 of 2013 allows for the sub-division of land (not restricted to Agricultural land).

Physical Planning Act of 1967, which was national legislation, was purposed “To promote co-ordinated physical planning and the utilisation of the Republic’s resources and for those purposes to provide for control of the zoning and subdivision of land for industrial purposes and of the establishment or extension of factories, for the establishment of controlled areas, for restrictions upon the subdivision and use of land in controlled areas and for other matters incidental thereto.”²⁹ The controlled areas mentioned are areas that have been declared or established under Section 5 of this act as a controlled area or the disestablishment of a controlled area in a proclamation in the Government Gazette (Physical Planning Act of 1967, Section 5). A significant example is the proclamation in the Government Gazette of the Province of Transvaal as a controlled area that was signed by the State President of the Republic of South Africa in 1969. This proclamation specifically excluded areas that had been established by the Bantu Trust and Land Act 18 of 1936 and any area located within a local authority and peri-urban areas³⁰. The validity of the Physical Planning Act was questioned after the re-demarcation of municipalities. The re-demarcation of municipalities will be discussed in Section 4 of this thesis which is themed accordingly.

The concern with the validity of the Physical Planning Act was that the structure of municipalities had been changed with Section 151(1) of the Constitution of 1996. The Constitution explicitly indicates that municipalities (the local government) must be established over the whole of South Africa (McLachlan & Schoor, 1998). This means that no area will fall outside a municipality. The Department of Land Affairs concluded that this act would still be in operation but not be applicable to any urban area³¹. It would still apply to all areas outside of urban areas. This established that the administration of the provincial government in terms of land use planning and development which was still

²⁹ The summary of the Physical Planning Act 88 of 1967.

³⁰ Schedule in Proc R20 in GG 2276 of 7 February 1969.

³¹ McLachlan/Schoor Letter from Chief State Law Adviser to the Department of Land Affairs 18 November 1998; Mpumalanga Provincial Government Department of Co-operative Governance and Traditional Affairs Application for change in land use/business rights/rural residential/excision of holdings 2015.

in operation before the implementation of SPLUMA would repeal this Act and implement wall-to-wall land use schemes.

The wall-to-wall Land Use Schemes would implicate the land use planning and development administration of the provincial government and the administration of the municipality to reform into one administration under the authority of the municipality. This would have a significant impact capacity and the need for capacity within the municipality to take over the provincial government administration. Apart from the converging provincial administrations, the administration of the different urban areas has already merged through the re-demarcation of the municipalities. This implies that there would be more than one Town Planning Scheme in the current SPLUMA's single wall-to-wall Land Use Scheme (SPLUMA, 2013: Section 24(1)). The administration of land use planning and development has increased significantly within the municipality. The municipality would be responsible for the margining of the different urban areas within the extended geographical wall-to-wall municipal area. It will also be responsible for the administration of the areas outside the urban edge that the provincial government administers. Was there careful consideration given as to the needed capacity for this transition? Could the same administration that managed a single urban area have the capacity to administer m

ltiple urban areas as well as the areas outside of the urban edge? How much consideration was given to the internal administration system and the needed capacity to successfully manage the first comprehensive land use administration?

Municipalities were under pressure after 1 July 2015 to comply with SPLUMA. The provincial government at this point already anticipated the need for assistance to municipalities to align their administration with SPLUMA (De Visser, 2009:13). This supportive role of the provincial government that relates to supervision forms part of its institutional role towards a municipality. Municipalities would work from a municipal readiness report. Specifically in the Province of Mpumalanga, for example, the provincial Department of Rural Development and Land Reform assisted with and monitored the

establishment of the MPTs³², developing the necessary Spatial Planning and Land Use Management (SPLUM) By-law and accompanying tariffs for applications. The provincial Department of Co-operative Governance and Traditional Affairs was part of the supportive structure for municipalities to transition to SPLUMA compliance. The provincial department facilitated a generic draft by-law, developed by an appointed service provider. The generic by-law was titled “The Spatial Planning and Land Use Management By-Law”. The municipalities had to manage their service providers to adjust this generic by-law according to their respective contexts if they chose to use it. These by-laws were proclaimed or officially declared in the Government Gazette at a very high cost. The GG charged R1002.98 per page in 2015 for proclamations. A by-law would typically consist of approximately 90 pages. In the Province of Mpumalanga a few of the related SPLUMA by-laws promulgated were found to be unconstitutional in that they had not been authorised by s 156 read with Part B of Schedule 4 of the Constitution and contradicted Section 118 of the Municipal Systems Act (De Kock, 2022). The Middelburg (Steve Tshwete Local Municipality), Emalahleni and Kinross Local Municipalities SPLUMA by-laws were found to be unconstitutional in 2021. The by-law typically entailed the establishment of the MPT, land use planning and development application procedures, appeal procedures, the land use scheme, the spatial development framework, charges for engineering services and more contextual arrangements. In other words, the by-law contextualised the Spatial Planning and Land Use Management System for the area.

3.6.2.1 SPLUMA Section 24(1) and the wall-to-wall land use schemes

One of the most significant differences between a SPLUMA-compliant wall-to-wall land use scheme and the previous ‘Town Planning Schemes’, could be said to be the area covered and the nature of the area covered. SPLUMA Section 24(1) indicates that a land use scheme should be developed that covers the entire municipal area. This requires the municipality to develop a wall-to-wall land use scheme that includes all urban areas, rural areas, agricultural land, previously disadvantaged areas and traditional authorities.

³² S 35 (1) of SPLUMA requires the establishment of an MPT to determine land use and development applications.

One should note that in any of the more current Land Use Schemes, it would indicate within the document that it represents the accumulation and integration of the relevant previous Town Planning Schemes. This also involved the inclusion of all areas under previous land use planning and development administrations that included provincial, local government and traditional authorities. This integration of administration is complicated and the 'how to' integration of the land use planning and development administration was left to the municipality. This was not just administrative integration, but other complications such as different ways of land ownership, were present in many municipalities. The implications of processing planning applications and applying this on the land use register were left to the resolution of the municipality.

Municipalities would make decisions on development applications based on the urban edge and the location of the proposed development in terms of it. The urban edge is not a legislative line and has the nature of a policy (Cilliers & Schoeman, 2008:87; Van Wyk, 2020:239), much like the nature of a Spatial Development Framework (SDF), although an SDF is legally required, it is also not a legislative document, but a policy and integrated principles. Typically, and historically, the land use scheme would cover the area within the urban edge and any application outside of it, for example a Township Establishment, and would then amend and expand the current Land Use Scheme – and broaden the service delivery area of the municipality. The urban edge was and is subject to the discretion of the related municipality³³. The change of boundaries of the municipalities from the urban edge to wall-to-wall municipalities played a major role in the change of the land use planning and development administrative system.

3.7 The local government and municipal boundaries

Municipal boundaries and the transformation of local government in the light of the SPLUMA System

³³ Van Wyk Planning Law 238-239 explains the complex term the 'Urban Edge'.

3.7.1 The comprehensive Land use planning system vested in SPLUMA

Section 33 (1) – the significance of the geographical municipal structure

The role of the municipality has been established in its authority over the processing and decision-making of land use planning and development applications. Section 33(1) of SPLUMA establishes the municipality as the body of first instance for land use planning and development applications within its vicinity (Laubscher et al., 2016:183-185). After the submission of the land use and land development applications to the municipality, it is considered by the Municipal Planning Tribunal (MPT) (Section 35 (1) of SPLUMA) or the appointed Municipal Official as per Section 35(2) of SPLUMA. This, considering that all land within South Africa falls within a municipality as established by the Constitution and the extent of the wall-to-wall land use scheme, creates an unparalleled comprehensive administrative system in terms of land use planning and development. The land use planning and development administration of rural and agricultural areas was moved from the provincial administration to the municipal administration (De Visser & Poswa, 2018:1). The administration was added to the system that includes all urban areas within the municipal area. This kind of comprehensive single system instituted by SPLUMA³⁴ has no previous process to compare it with, creating a new territory for administration and a question for the needed capacity. The advancements of the government to establish this system have been long in coming and the focus was on establishing the necessary legislation. It is understandable that the considerations for capacity for this system did not enjoy the needed official administrative considerations. It was an onerous and tremendous task to produce framework legislation that could cover and address a new land use planning and development system, while addressing the historical legislation of this system, without interrupting development. Municipalities frequently are criticized for the slow processing of applications or not enforcing land use practices according to the schemes. At times the mentioned lack of assessment that was initially necessary to address the administrative system is at play. The responsibility of

³⁴ SPLUMA was promulgated on 5 August 2013 and commenced on 1 July 2015 Proc 26 in GG 38828 of 27 May 2015; The Regulations of the Spatial Planning and Land Use Management Planning Act 16 of 2013 was GN R239 in GG 38594 of 23 March 2015.

specifically smaller municipalities is tremendous to maintain and administer the land use planning and development system. The comprehensive system is purposed for a significantly larger administrative system and should be equipped with more professional planners and support staff.

3.7.2 The Constitution, the Municipal Demarcation Act and the wall-to-wall municipalities in the light of SPLUMA

The Constitution of 1996 established municipalities as an important sphere of government (De Visser, 2009:9). It required that the municipal areas should include rural and urban areas covering the entire country and resulting in the current wall-to-wall municipalities (Jeeva & Cilliers, 2021:83)³⁵. The promulgation of the Local Government Municipal Demarcation Act 27 of 1998 provided the platform for the structuring of the boundaries or demarcation of municipalities. Sections 1-5 of the Local Government: Municipal Demarcation Act 27 of 1998 indicate the required establishment, status, function and powers of the Municipal Demarcation Board. The Act required an appointed Board to determine or change municipal boundaries in terms of other related legislation and Chapter 7 of the Constitution (Sections 151 – 164 of the Constitution of the Republic of South Africa 1996) that prescribe the framework for local government (. During the year 2000 the municipal boundaries were re-demarcated. The transitional local authorities failed to integrate rural and urban areas in some cases, because of certain disputes as well as issues with provincial boundaries. This necessitated the reconsideration and change of the criteria for demarcating municipal areas. Various changes were made between 1993 and 2020, with significant re-demarcation during 2011 and 2020 (Jeeva & Celliers, 2021: 87-89³⁶) and boundary changes were made over a period of 22 years (Jeeva & Cilliers, 2021:88³⁷). The number of municipalities changed from 1262 municipalities in 1993 to 257 municipalities in 2020, which absorbed 1262 previous

³⁵ Jeeva and Cilliers 2021 TRPJ 83 provide a table of the necessary demarcation criteria as per Section 24 and 25 of the Municipal Demarcation Act 27 of 1998. The reference also explains the inconsistencies of previous attempts to describe the demarcation of municipalities.

³⁶ Jeeva and Cilliers 2021 TRPJ 87-89 indicate that these changes were made to redefine administrative regions within the country in-line with the Constitution 1996 and redefinition of administrative areas.

³⁷ Refers to local boundaries.

municipal areas (Jeeva & Cilliers, 2021:87; Sikhakane & Reddy, 2009:234), creating new challenges for municipal administration and land use management. In effect, the municipalities changed from being just within the urban edge to wall-to-wall municipalities (Forbes, 2011:5). This coincided with the new system of local government (De Visser, 2009:10). The restructured wall-to-wall municipalities extended the municipal area significantly, from its historical structure and included all urban areas, farmland or agricultural areas, any previously disadvantaged areas as well as traditional areas (Forbes, 2011:5; De Visser, 2009:10)³⁸. The traditional areas to be included in the municipality refer to the areas divided according to the Natives' Land Act 27 of 1913 and the Development Trust and Land Act 18 of 1936.

The structure of the re-demarcated municipalities was echoed in SPLUMA. SPLUMA in its definition of a municipality was in line with the 2000 to 2006 (Jeeva & Cilliers, 2021:87) re-demarcation of municipal areas that relates to being wall-to-wall municipalities. Municipalities that stretched planning beyond the previous traditional municipal boundaries were levelled with the urban edge and included all areas of new responsibility extended to farmland and traditional areas (Forbes, 2011:5).

The inclusion of all areas within a municipal area and within a comprehensive land use scheme and subsequent land use planning and development system requires a practical example.

3.8 Spatial Development Frameworks and SPLUMA

The Spatial Development Framework (SDF) as a key tool in the Spatial Planning and Land Use Management system of South Africa as per SPLUMA summary (SPLUMA, 2013:2) and Chapter 4 with sections 12- 14 (SPLUMA, 2013:24-28) related to the National SDF, sections 15-17 (SPLUMA, 2013:28-30) related to the provincial SDF, sections 18-19 (SPLUMA, 2013:30) and sections 20-21 (SPLUMA, 2013:32-34) related to the municipal SDF. SPLUMA section 22 (SPLUMA, 2013:34) provides the status of the SDFs. It legally necessitates the consideration of the municipal SDF in any decision-making related to land development and involving any related legislation (this includes

³⁸

SPLUMA) (SPLUMA, 2013:34, section 22(1)). This legally emphasises the importance of the municipal SDF as the primary spatial tool for land use management decision-making apart from the land use scheme. This section further provides flexibility in Section 2(2) in that it makes room for site-specific (context-specific) circumstances that may need variation from the provisions of the municipal SDF. It also requires consistency (SPLUMA, 2013:34, Section 22[3]) between the provincial and the municipal SDFs and prescribes a procedure to align these if they are not aligned.

3.8.1 The local municipal SDF

SPLUMA prescribes SDFs on the different spheres of government that are on National, Provincial, Regional and Municipal Level. The Municipal SDF, as singled out in SPLUMA Section 22(1), is a key component for decision-making for any land development application. This thesis considers the Municipal SDF within the implementation of the SPLUMA aligned Spatial Planning and Land Use Management System as discussed in Chapter 4.

The municipal SDF must form part of the municipality's IDP (Integrated Development Plan) as it is required by the Municipal Systems Act 32 of 2000. SPLUMA stipulates that the proposed changes to the municipal SDF must be published in the Government Gazette by the Municipal Council before it is adopted. This is done to provide 60 days for the public to comment on the proposed changes to the SDF and then for the municipality to consider all the representations and comments received regarding the proposed changes (SPLUMA, 2013:32). It should be noted that the SDF Guidelines for SDFs 2017(2010) from the then Department of Rural Development and Land Reform, are guidelines and not legislation. The execution of a project most frequently brings in the management of change, and it will happen that tasks overlap, and, in some instances, the guidelines require more and wider implementation or action than SPLUMA itself. The requirements are not completely aligned.

SPLUMA section 21(a-p) provides the required content of a municipal SDF. See the table below for the minimum required content:

Table 12: Content of the municipal SDF required by SPLUMA

Content of the municipal SDF as per SPLUMA (Section 21)		
a)	Give effect to SPLUMA development principles;	Spatial justice, spatial sustainability, efficiency, spatial resilience, good administration
b)	SDF must be represented spatially as well as in written form;	Maps and document
c)	Must include the municipal vision for spatial development for 10-20 years;	
d)	Identify structural form of municipality, including development corridors, activity spines and economic nodes;	Form-giving aspects of the municipality
e)	Growth projection for population for 5 years;	
f)	Project estimated housing needs as well as possible locations for development across all socio-economic categories;	
g)	Project employment trends and economic activity for next five years;	
h)	Project engineering infrastructure and services provision for current and future development for five years;	
i)	Identify areas for inclusionary housing;	
j)	Identify areas with environmental sensitivity and agricultural land;	
k)	Identify areas where incremental upgrading will be applicable;	
l)	Identify areas where development processes and procedures should be shortened and where local development plans should be more detailed;	
m)	Express in spatial manner the sectoral policies of all municipal departments;	Maps
n)	Spatial representation of capital expenditure framework;	IDP

o)	Determine impact and structure of land use management scheme in area;	
p)	Indicate implementation plan for budgets and resources, amendments to the land use scheme, institutional arrangements, any partnerships in implementation.	

Source: SPLUMA 16 of 2013

3.8.2 SDF and its changes before and after SPLUMA

3.9 Other relevant legislation and systems that form part of the planning system

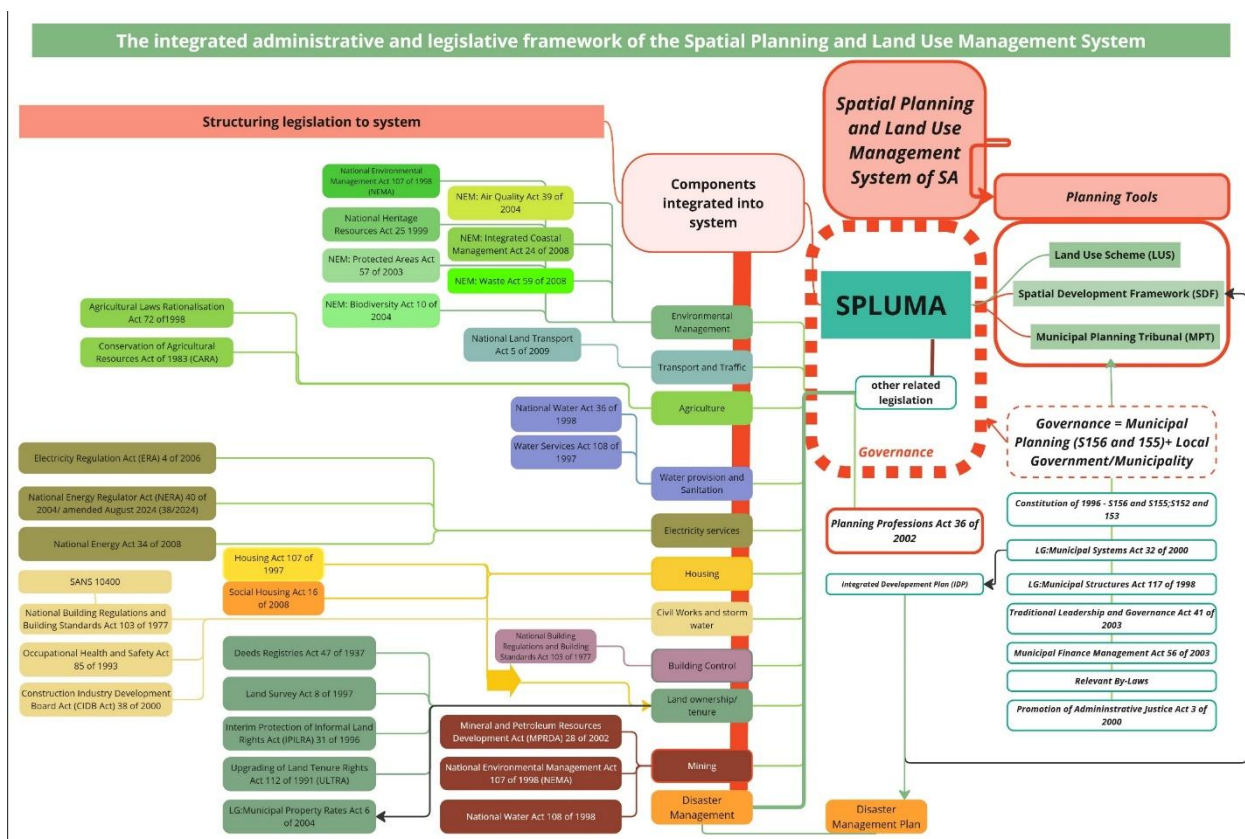


Figure 17: Representation of the South African Spatial Planning and Land Use Management System

The South African Spatial Planning and Land Use Management system is indicated in SPLUMA. SPLUMA's summary directly indicates:

*To provide a **framework for spatial planning and land use management** in the Republic; to specify the relationship between the spatial planning and the land use management system and other kinds of planning; to **provide a framework** for the monitoring, coordination and review of **the spatial planning and land use management system*** (SPLUMA, 2013:2),

SPLUMA (SPLUMA, 2013:12) also defines the land use management system in terms of the following: “**Land use management system means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures.**”

The content of SPLUMA consists of four key components:

1. The **Development Principles** (Section 7 of SPLUMA, 2013:18).
2. The **Spatial Development Frameworks** (Sections 12-22 of SPLUMA, 2013:24-34).
3. The **Land Use Scheme** (Sections 23-32 of SPLUMA, 2013:34-42), and
4. The **MPT** (Sections 35-48) and the administrative mechanism for land use and development matters (Sections 49-60 of SPLUMA, 2013:54-62).

The Spatial Planning and Land Use Management System of South Africa (the planning system) is prescribed by legislation (see the discussion on SPLUMA and the outdated and repealed legislation in Chapter 4). The planning system is a legal system that must be administered. The functions of planning are spread throughout all spheres of government, but all land use and development applications and therefore administration, are processed and decided on by the municipality (local government) (SPLUMA,2013:44,34,40; also see Chapter 4 for a discussion on the authority on decision-making and the history behind the content of municipal planning). The planning system consists of certain key components with a prescribed system and developed processes of administration. The planning system primarily makes use of the land use scheme and spatial development frameworks to regulate and administer land use rights as well as administer future planning. The mechanisms that are used for decision-making are the Municipal Planning Tribunals (MPTs). Each municipality may create their own processes and procedures in line with SPLUMA to administer spatial planning and land use management. The decision-making and planning of all land use and development

applications must be motivated by the development principles as per the content of SPLUMA.

The South African Spatial Planning and Land Use Management system as indicated in SPLUMA functions within an administrative or governance framework. See the Diagram below for the integrated administrative and legislative framework of the Spatial Planning and Land Use Management System in South Africa. The primary planning tools used in the system (the LUS and the municipal SDF) are administered by the relevant Municipality (see Chapters 4 and 5 for the administrative structures), being in line with National, Provincial and Regional SDFs. The Municipality is governed by legislation that is relevant in the foundation and processing of land use planning and development applications and decision-making, and certain needed considerations that should be included within the planning system. SPLUMA being the primary framework legislation for the South African Spatial Planning and Land Use Management system considers other relevant legislation within the administration of this system. The main categories with their own framework legislation form an additional and integrated part of the functioning of SPLUMA and the administration of the South African Spatial Planning and Land Use Management system. Not included in this diagram are the relevant Provincial Legislation and necessary municipal by-laws, but just as important. The diagram largely focuses on the National Framework as it is implemented within a municipality.

The main categories with their own related frameworks as integrated with the South African Spatial Planning and Land Use Management System are indicated here below:

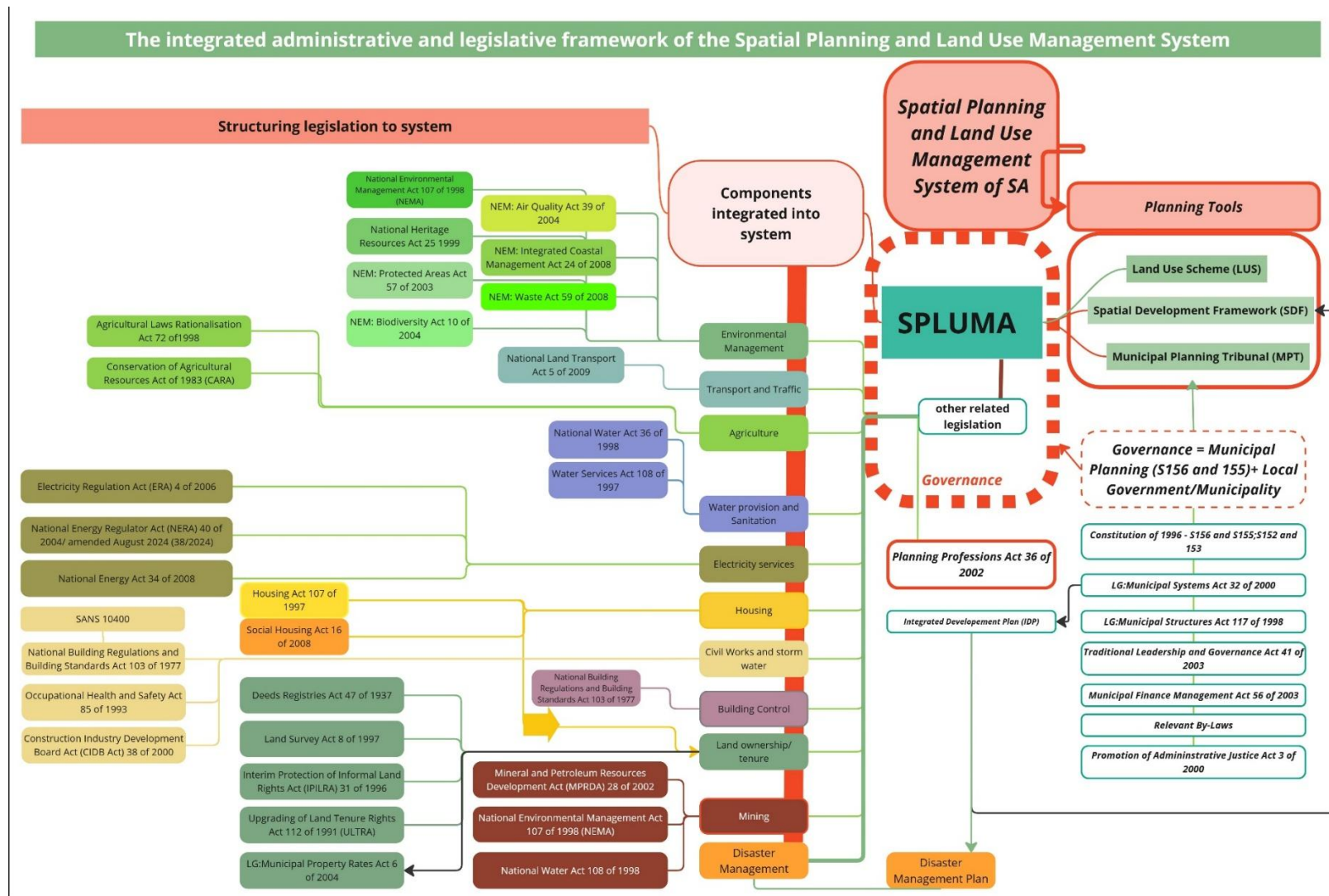


Figure 18: The Spatial Planning and Land Use Management system and related legislative framework

3.9.1.1 Environmental Management

The National Environmental Management Act (NEMA) 107 of 1998 (NEMA, 1998:2) is intended to provide the framework and establishment of environmental management within the government or administrative framework of South Africa, as well as establishing the principles of decision-making related to environmental matters. NEMA is the primary piece of environmental legislation that forms the framework for other environmental legislation. The legislation discussed below in this section and including the National Heritage Resources Act 25 of 1999, the National Environmental Management (NEM): Protected Areas Act 2003, the NEM: Biodiversity Act 10 of 2004, the NEM: Air Quality Act 39 of 2004, NEM: Integrated Coastal Management Act 2008, and the NEM: Waste Act 2008. This forms part of the NEMA Integrated Environmental Management (IEM).

NEMA provides for the establishment and framework for Environmental Impact Assessment (EIA), which is crucial in the process and Spatial Planning and Land Use Management System of South Africa. It forms part of the planning processes as well as the development of the planning tools within the Spatial Planning and Land Use Management System of South Africa. SPLUMA reiterates the obligation of Section 24 of the Constitution to protect the environment (natural) in a sustainable manner and requires the planning system to be protective of the environment (SPLUMA, 2013:4), that is primarily included in NEMA (NEMA, 1998:2). Section 24 of the Constitution of 1996 that deals with environmental rights, reads as follows:

“Everyone has the right –

- (a) To an environment that is not harmful to their health or wellbeing; and*
- (b) To have the environment protected, for the benefit of present and future generations, through reasonable legislative and other measures that –*
 - (i) Prevent pollution and ecological degradation.*
 - (ii) promote conservation; and*

(iii) *secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development* (Constitution, 1996:9).

NEMA defines the environment as follows in section 1(xi):

“... ‘environment’ means the surroundings within which humans exist and that are made up of –

- (i) *the land, water and atmosphere of the earth,*
- (ii) *micro-organisms, plant and animal life,*
- (iii) *any part or combination of (i) and (ii) and the interrelationships among and between them, and*
- (iv) *the physical, chemical, aesthetic and cultural properties and conditions of the foregoing that influence human health and well-being”* (NEMA, 1998:8).

Through SPLUMA, environmental rights must be protected, and this then includes all other subsequent environmental legislation (SPLUMA, 2013:4), that is in line with NEMA (NEMA, 1998:2). Environmental legislation mentioned within SPLUMA specifically refers to NEMA and related legislation (SPLUMA, 2013:10). SPLUMA’s development principles also include having to “*uphold consistency of land use measures in accordance with environmental management instruments*” (SPLUMA, 2013:18). Spatial sustainability includes decision-making procedures that minimise environmental, social, economic and financial impacts (SPLUMA, 2013:18). NEMA requires an integrative approach to sustainable development within the planning, implementation and evaluation of decisions to ensure that development will benefit future and current generations (NEMA, 1998:2). NEMA further requires that the development of legislation should integrate good environmental management into development practices (NEMA, 1998:2), which is done within SPLUMA.

EIA

The Environmental Impact Assessment (EIA) plays a crucial role in development and certain land use applications. EIAs are attending to Section 24 (1)-(7) of NEMA. This

section deals with the implementation of NEMA Section 24 (1) specifically states the following:

“24(1) In order to give effect to the general objectives of integrated environmental management laid down in this Chapter, the potential impact on –

- (a) the environment,*
- (b) socio-economic conditions; and*
- (c) the cultural heritage*

*of activities that require authorisation or permission by law, and which may significantly affect the environment, must be considered, investigated and assessed **prior to their implementation** and reported to the organ of state charged by law with authorising, permitting, or otherwise allowing the implementation of an activity”* (NEMA, 1998:34).

The rest of this section provides for the identification and classification of activities and related authorisations necessary, prescribed processes and considerations and implementation of activities on land (land use rights or zoning is directly linked to activities on land). It prescribes the necessary framework to determine the environmental impact of activities on land (development). Government notices done in terms of NEMA indicate the lists of activities that requires authorisation, known as Environmental Authorisation (EA). The Environmental Impact Assessment Regulations of 2014 (as amended) provides for EIA timeframes, prescribes general requirements for EIA applications, prescribes application procedures to obtain EA in general, for a basic assessment, a scoping and environmental impact report (S&EIR), the issue of EA and its content, compliance specifications, timeframes and public participation. The public participation process for the EIA forms part of the public participation process of plan

ing applications that are related to developments that are specifically related to township establishments and larger developments. NEMA and its regulations require that a qualified environmental assessment practitioner (EAP) should be appointed to conduct S&EIRs (Section 12 of EIA regulations, 2014).

The process related to the EIA to obtain possible EA is as follows:

- establish if an EIA is necessary for the proposed planning application,
- If an EIA is required for the application, a scoping report will be done to determine what would need to be done,
- The EIA report will be done in terms of the scoping report,
- In accordance with the proposed planning application or development, the EIA must address the proposed land use activity on the specific indicated areas of land, and
- The EIA is submitted to the relevant authority (Department of Environmental Affairs – the provincial branch).

This also relates to the Heritage Impact Assessments (HIA), which is separate, but typically a part of an EIA process. The HIA is discussed in a paragraph below.

SDF, NEMA and SPLUMA

One of the main tools of the South African Spatial Planning and Land Use Management System is the Spatial Development Framework (SDF). In the preparation of the SDF for all spheres of government, all SDFs should consider all environmental management instruments adopted by the related environmental management authority and all environmental objectives should be indicated in the SDF (SPLUMA, 2013:24,28,36). The content of all SDFs should comply with environmental legislation (SPLUMA, 2013:30,32,36). All municipal SDFs should include a strategic assessment of the environmental pressures, sensitivities and opportunities within the municipal area. A crucial indicator within the SDF should be the establishment of high potential agricultural land in Section 21(j) of SPLUMA. The content of all SDFs should comply with environmental legislation (SPLUMA, 2013:30).

The Municipal SDF should include all open space areas, natural areas or resources and flood areas

The municipal area that was studied in Chapter 5 included conservation areas. A way to make conservation economically viable is tourism. The province of Mpumalanga initiated, together with Eswatini, a Tourism and Biodiversity corridor, that stretches into Mozambique and Eswatini from the City of Mbombela. This together with the Kruger National Park and other conservation areas are typically included within an SDF and all policies and measures to secure it as well. The SDF will also typically include all biodiversity information that ranges from the climate of the area, topography, hydrology (water catchment areas, river systems, dams, wetlands, to strategic water, all land cover, vegetation, aquatic biodiversity, terrestrial biodiversity (ranges from protected areas indicating the relevant importance of different areas on a scale), ecological corridors, aquatic biodiversity corridors and conservancies (which relate to conservation areas). See Chapter 5 for the different conservancies. In an SDF conservation areas are potentially included as areas of Tourism, with the consideration of EIAs for any development to support this, as well as open spaces that could also include biodiversity areas or environmentally sensitive areas that have conservation value. It also includes areas with rivers and riverbanks and possible heritage areas.

LUS, NEMA and SPLUMA

The other main tool of the South African Spatial Planning and Land Use Management System, the Land Use Scheme (LUS), requires that the LUS be consistent with the municipal SDF and promote inflicting minimal impact on the environment and natural resources (SPLUMA, 2013:36). The Municipal Planning Tribunal (MPT) is obliged to ensure compliance with all environmental legislation (SPLUMA, 2013:50). SPLUMA further requires that environmental impact assessments should be included in the procedures of lodging applications and decision-making of these applications (SPLUMA, 2013:58).

SPLUMA requires the inclusion of certain land uses within the LUS, which includes a land use purpose (zoning) for “*conservation purposes*” (SPLUMA, 2013:68). Conservation purposes are defined in SPLUMA as “... *means purposes normally or otherwise*

reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity”.

The LUS that was discussed in Chapter 5 included land use and control measures for the protection of land and the environment that requires all land development to be aligned with NEMA and its amendments. The LUS also included a zoning for conservation that consists of the natural environment, physical ecological environment, historical characteristics of land and the built environment for the purpose of preserving the identified areas. The LUS further specified certain conservation areas such as the Kruger National Park, Marloth Park, High potential agricultural land, Lion Spruit and a smaller conservancy.

National Heritage Resources Act (NHRA) 25 of 1999

The legislation is intended to establish the management framework for national heritage resources. Heritage resources are defined as any place or object of cultural significance (NHRA, 1999:8). The act also refers to urban and regional planning itself (NHRA, 1999:10). The South African Heritage Resources Agency (SAHRA) manages the registration and record-keeping as well as the identification of the resources, co-ordinates and manages the resources, serves as a monitoring and advisory body, promotes the education and training of the management of the resources belonging to the state (NHRA, 1999:12,26). Heritage resources could be buildings, areas or objects. The Heritage Impact Assessment (HIA) typically forms a required part of the EIA process as a separate study and report.

National Environmental Management: Protected Areas Act (PAA) 57 of 2003

The National Environmental Management: Protected Areas Act 57 of 2003 is intended to provide protection and conservation for South Africa's biodiversity and its natural landscapes and seascapes and the management of such a register and the management of the registered areas. The protected areas are either national, provincial or local (PAA, 2003:2). Protected areas are indicated in the PAA in section 9 as:

The system of protected areas in South Africa consists of the following kinds of protected areas:

(a) Special nature reserves, nature reserves (including wilderness areas) and protected environments.

(b) World heritage sites,

(c) specially protected forest areas, forest nature reserves and forest wilderness areas declared in terms of the National Forests Act 84 of 1998; and

(d) mountain catchment areas declared in terms of the Mountain Catchment Areas Act 63 of 1970)" (PAA, 2003:16).

The municipal SDF requires the identification and indication of all protected areas as it has to consider all environmental legislation considered a key decision-making criteria (also see Chapter 5 and discussion above in NEMA). The LUS should also provide a land use activity (zoning) that accommodates the purposes of conservation. Protected areas can be considered under conservation as per SPLUMA (see above). The LUS as discussed in Chapter 5 has made provision for such zoning as well as management areas that are related to the protection of areas. Specifically zoning that relates to this legislation in the LUS discussed in Chapter 5 include 'Conservation area', 'Parks', 'Open Spaces' and 'Tourism', each on a different scale under the law.

National Environmental Management: Biodiversity Act (NEMBA) 10 of 2004

The purpose of the Biodiversity Act 10 of 2004 is to ensure the preservation of the country's biodiversity within the framework of NEMA (NEMBA, 2004:2). Biodiversity includes the indigenous biological resources, ecosystems and species (NEMBA, 2004:2). The act allows for the establishment of the South African National Biodiversity Institute (SANBI) (NEMBA, 2004:2). This falls within the establishments of rights within section 24 of the Constitution (NEMBA, 2004:22). The Act provides for the declaration of national botanical gardens together with Schedule 1 of the Forest Act 122 of 1984 (NEMBA, 2004:38). The framework for biodiversity planning and monitoring is set within this act (NEMBA, 2004:40). The inclusion of the biodiversity information is required by the Department of Agriculture, Land Reform and Rural Development in the SDF Guidelines 2014 (published by the then Department of Rural Development and Land Reform).

SANBI is an important body that performs significant research and continuously tries to improve biodiversity management. They developed, within their research, a similar system of classifications that they tried to link to planning and relevant zonings. The development or review of an SDF typically includes significant information from SANBI and its research. The example of Chapter 4 included the biodiversity section that contained information and maps for the Category B municipality that specifically represented the following table.

Table 13: Biodiversity information in the SDF

Biodiversity section in SDF	Content of related biodiversity section in SDF
Land cover	Cultivation: Commercial dry land, commercial irrigated land, sugarcane, semi-commercial subsistence dry land; forest and woodland (degraded), thicket and bushveld (degraded), forest, forest and woodland, forest plantations, mines and quarries, thicket and

	bushveld, unimproved grassland, urban or built-up land in industrial and transport, urban built-up land in residential, water bodies.
Vegetation	This area consists of Savannah Biome that consists of 33% of SA. SA consists of six Biomes: fynbos biome, thicket biome, forest biome, succulent karoo biome, grass veld biome and savannah biome. The municipal area also included the Sweet Lowveld Bushveld, Mixed Lowveld Bushveld, Lebombo Arid Mountain Bushveld and Sour Lowveld Bushveld.
Aquatic biodiversity	Classified as protected, irreplaceable, highly significant, important and necessary, ecosystem maintenance.
Terrestrial Biodiversity Assessment	This map indicates the areas that are protected, being irreplaceable, highly significant, important and necessary, with the least concern about it and no natural habitat remaining. The description of the map expands on which areas within the municipality fall within which areas and what that means. The provincial biodiversity plan has also been included. Further included are the same categories in the scale as mentioned in the Aquatic biodiversity section above and include the indication of ecological corridors and aquatic corridors.
Conservancies	The municipal area includes 28 identified conservancies. The municipal area includes eight conservancies and/or nature reserves as protected areas.

Source: adapted from SANBI with acknowledgement to Dr. Martin Lotter as the source to the Category B municipal SDF. Acknowledgement is also given to the Department of Environmental Affairs and Tourism of 2009.

Table 14: Related conservancies and nature reserves in Nkomazi Municipal area

Conservancies and nature reserves in the category B municipal area		
Reserve/Conservancy	Location	Area (ha)
Lion spruit Conservancy	Adjacent to the south of Marloth Park.	1615.27
Dumaneni Nature Reserve	South of Malelane along the R570 road.	2664.63
Mahushe Shongwe Nature Reserve	Adjacent to the west of the Mzinti settlement.	1139.73
Ligwalagwala Conservancy	South of the N4	12639.98
Mawewe Cattle/Game Project	Near Mgobode, Magudu, Sibange and Madadeni Settlements.	9190.24
Masibekela Wetland	East of the Mananga Border Gate to Swaziland and surrounded by Mananga, Thambokhulu, Mbuzini, Khombaso and Masibekela Settlements.	987.46
Mananga Care Programme (Irr)	In Mananga settlement.	244.13
Kruger National Park	South-eastern section of the Sabie River from Skukuza	154 662.62

The SDF considers the implications of the provided information from SANBI and the Department of Environmental Affairs and any other relevant related information in this regard and interpret it spatially. This also has an impact on agricultural land and mining. The SDF also included the provincial biodiversity sector plan as well as the district bioregional plan.

The LUS must consider all environmental management legislation and instruments adopted by the related authority and comply with it (SPLUMA, 2013:36). This means that all environmental information about the relevant municipal area in context must be known and considered. The LUS that was developed and discussed in Chapter 5 included general and specific regulations and information considering biodiversity. The General Management Areas relevant to this are the General Management area, Critical Biodiversity Areas, Conservation, Ecological Support Area and the Protected Area. The more specific General Management Areas include the Kruger National Park; the Lebombo Border; Lion spruit; and Marloth Park. The specific and general regulations for these areas are indicated on the map of the area as well as written in the document. The land use register contains the land use rights of these specific areas and properties. The Land Use Scheme Map for the category B municipality, as in line with SPLUMA, contains a layer that indicates the biodiversity of the entire municipal area.

National Environmental Management: Air Quality Act 39 of 2004

The NEMA related Air Quality Act 39 of 2004 is intended to provide a framework legislation for the protection of air quality in terms of curbing air pollution as part of sustainable development (Air Quality Act, 2004:2). It provides for national, provincial and local standards and management measures to be developed. It also includes the management of pollution of dust, noise and offensive odours. This act is guided by the NEMA principles. All legislation that is in line with this act is included within the considerations of the development of the SDF as well as the LUS. This act does not just feature in environmental legislation but could be developed as Health services. In the province of Mpumalanga, the Ehlanzeni District Municipality promulgated a Municipal

Health Services By-Law in December 2018, that had been anticipated since 2015, and that addresses the structure to address air quality with the district. This by-law also addresses other service delivery frameworks in terms of health standards that include sanitation, private sewerage, water supply, other pollution matters that include land and water pollution, waste, activities such as hairdressing, dry-cleaning, swimming pools, accommodation, child care services, nursing homes, camping grounds, keeping of animals, ritual slaughter, funeral services, burials and more.

NEM: Integrated C

Coastal Management Act 24 of 2008

The NEMA related Integrated Coastal Management Act 24 of 2008 is purposed to promote the conservation of the coastal environment in terms of sustainable development by the establishment of an integrated system of coastal management. It provides for the protection of the coastal areas and outlines the responsibilities of the state therein. It addresses dumping in the sea and other pollution (Integrated Coastal Management Act, 2008:2).

NEM: Waste Act 59 of 2008

The National Environmental Management Waste Act 59 of 2008 is intended to protect health and the environment by shaping measures to prevent pollution and ecological degradation in terms of sustainable development. It provides a framework for institutional planning for waste management in implementing national norms and standards and the regulation of waste by all spheres of government (Waste Act, 2008:2). It also enables a national waste information system that requires compliance. The local waste management plans that are in line with this legislation are considered in the development of the municipal SDF and the development of the wall-to-wall LUS. The consultation of the basic services and waste management policies, status quo of the system, and other related by-laws are obtained from the municipality. This information is included in the

planning tools and is also then effectively part of the decision-making within the MPT for all planning applications.

3.9.1.2 Transport and traffic

The Integrated Transport Plan (ITP) is a legal requirement in terms of the National Land Transport Act 5 of 2009 (NLTA). The ITP forms an integral part of the IDP (see section 6.2.1.11). It also forms part of the content of the SDF. In the Category B municipality discussed in Chapter 4 of this thesis, the border control and a potential special economic zone forms part of the planning considerations related to transport and traffic for the municipal area. This was included in the SDF as well as the LUS for the municipal area. Before the implementation of SPLUMA, the SEZ and border control area as well as the dry dock, would typically fall within the administration of the provincial government, because it is located outside the urban area. After the implementation of SPLUMA, the local municipality officially obtained the register for all land use rights in the area that included the mentioned areas here. All applications were handed into the local municipality from 2014, but the land use register was in limbo until 2015 when SPLUMA was implemented.

The National Land Transport Act 5 of 2009 is purposed to facilitate the restructuring and transformation of the national transport system that was started in the National Land Transport Transition Act 22 of 2000 that was repealed by NLTA.

Transport planning itself forms an important part of town or urban and regional planning. The roads, size, scale, design and form are essential in any development plan and the road design is typically done by a town or urban and regional planner. Though this is forgiving to planning, as it forms part of planning and town or urban and regional planners can specialise in transport planning within its various definitions. Planning in transport is primarily associated with roads and related infrastructure like bridges, but transport also includes air, rail, ships and more. The design of transport modes entails knowledge of the different modes of transport, which is a skill a planner will be equipped with. Planners can specialise in Transport Planning itself.

National Road Traffic Act 93 of 1996

Town or Urban and Regional Planners consider the design of the transport in anticipation of the projected and calculated traffic for the mode of transport infrastructure. The National Road Traffic Act 93 of 1996 is intended to provide a national framework for uniform road traffic matters (National Road Traffic Act, 1996:2). It consists of many amendments that had been put in place up until 2024. Planners must understand basic traffic rules when considering the design of roads and considering planning applications and developments in terms of access for motor vehicles, busses, trucks, taxis and more. There are other rules and regulations for other kinds of traffic that include railways, harbours, air traffic control and more, with which a planner will be made familiar when planning any development that would include these. Road traffic is the most related to planning applications, given in context.

3.9.1.3 Agriculture

The Conservation of Agricultural Resources Act 43 of 1983 is purposed to control the use of natural agricultural resources in South Africa to protect the soil, water sources and vegetation, as well as control over the spreading of weeds (Conservation of Agricultural Resources Act, 1983:2).

Sub-division of Agricultural Land Act 70 of 1970 was purposed to provide for the sub-division of land outside of the urban edge, which would mostly be regarded as agricultural land during the time it was promulgated. The sub-divisions were typically administered by the provincial government (see Chapter 4 of this thesis) before SPLUMA was implemented, with the necessary permission of the Department of Agriculture and the relevant Municipality. After the implementation of SPLUMA, sub-divisions could be made through SPLUMA, with the agreement of the Department of Agriculture (Minister of Agriculture, Land Reform and Rural Development). The said Act was published to be repealed, but this was never implemented (see Chapter 4 of this thesis). There are movements to publish new agricultural legislation that will repeal this act. Agricultural land formed part of the required wall-to-wall land use scheme (LUS) as per SPLUMA (also

see Chapter 4 of this thesis) and is controlled as a zoning and/or management area on the scheme in line with any agricultural legislation.

The Preservation and Development of Agricultural Land Bill, that was published on 18 September 2020, was signed by the president of the RSA into legislation during January 2025. It provides for a national policy and regulatory framework for the preservation and development of agricultural land. It relates to the protection and preservation of agricultural land and its production and optimal potential that entails food production. It also requires provincial agricultural sector plans to enable better coordination of agricultural land use.

The municipal SDF will indicate the land capability, which is located within the municipal area. This will typically be prepared by the Department of Agriculture, Land Reform and Rural Development (previously the Department of Agriculture, Forestry and Fisheries). The land capability report prepared for the project discussed in Chapter 5 of this thesis was prepared by the then Department of Agriculture, Forestry and Fisheries, within the Directorate: Land Use and Soil Management; NRIA, by Ms Anneliza Collett, working through the Agricultural Research Council' (ARC) Institute of Soil, Climate and Water (ISCW). The land capability report includes the eight-capability classification system, which changed to fifteen evaluation values later, and incorporated parameters within a Geographic Information System (GIS). It is interesting that it was determined that nowhere in South Africa could it be found that good soils and good climate coincided (Schoeman et al., 2002). This involves a vast database of information set up against certain standards to be reflected on a map and descriptions. Land Capability is determined through the following ratios: Soil capability 30%; climate capability 40% and terrain capability 30%. The main contributors to soil capability consist of: Plan available water (80%); soil sensitivity (17%); and soil fertility (3%). The climate capability's main contributing factors were moisture supply capacity (50%); physiological capacity (20%); climate constraints; rainfall and temperature (30%). The terrain capability consisted of Moisture accumulation (20%); photosynthesis (15%); and sensitivity (65%).

The following terms are cardinal in the determination of land capability process and consideration of agricultural land.

Land capability is defined as the most intensive use of land in the long term for the use of rain-fed farming that is determined by the dynamics between terrain, climate and soil (DAFF, 2016). The FAO (1976) stated that the assessment process for land performance when used for certain purposes necessitates the interpretation of studies of soils, vegetation, land forms, climate and other related aspects in order to compare kinds of applicable land uses to the objective of the evaluation. Land Use Planning evaluation and Land Evaluation include concepts such as land management, the characteristics of the land, the current land use, land use requirements and more. Land capability should not be confused with or replace the interpretation of land suitability.

Land suitability is a statement of the adaptability of a specific area for a specific kind of land use. The suitability depends on the proposed land use activity. Certain land may be suitable for the growth of potatoes or maize, but not suitable for the growing of herbs (Collett, 2009 from DAFF, 2016).

Agricultural potential is defined as:

...(a) a measure of potential productivity per unit area and unit time achieved with specified management inputs; and

(a) For a given crop or field type and level of management, is largely determined by the interaction of climate, soil and terrain (PD-ALB, 2013 in DAFF, 2016)".

The productivity is deemed as an indicator of the agricultural potential for a particular crop, managed on a specific portion of land as being dependent on soil condition, precipitation, temperature, terrain and crop characteristics (Schoeman & Scotney, 1987 in DAFF, 2016).

Crop suitability explains the suitability of a certain area of land for the continuous production of a certain crop with the necessary level of management and skill.

Unique agricultural land is important land in terms of agriculture, which is used for the production or growth of high quality or high yields of economically viable specific crops, because of an ideal combination of soil properties, terrain features and location. Specific farming or conservation measures would typically be needed.

The category B municipality discussed in Chapter 4 of this thesis holds high potential agricultural land as most of its land composition.

3.9.1.4 Water provision and sanitation

The National Water Act 36 of 1998 provides for legislation related to water resources and it repealed outdated other related laws (National Water Act, 1998:2). The act relates to the distribution and allocation of water resources, the national authority of resources, the necessary protection of water resources and integrated management of the water resources. The infrastructure and planning around water resources form part of the fabric of planning. The development of dams and reservoirs, services infrastructure, pipelines, water licensing and permissions form part of the planning processes (seen within context). The state of a municipality in terms of its water resources, catchment areas, rivers and overall hydrology system will be indicated in an SDF. The water resources will also overlap with some parts of the biodiversity sectors. The LUS typically provides regulations for water resources in different manners. One way would be to have buffer areas around a river system to protect the riverbank and the river itself. The LUS will include all utilities, natural areas, dams and rivers with consideration of related legislation.

The Water Services Act 108 of 1997 provides for the rights of access to basic water supply and basic sanitation as well as setting standards for tariffs and establishment of water services development plans. It also provides for an administrative regulatory framework for water services institutions, water boards and committees with powers and duties. It also establishes the gathering of information on a national system and the distribution thereof (Water Services Act, 1997:2). The provision of water services forms part of basic services that are provided by the municipality. Infrastructure projects for water services are typically indicated within the IDP and captured in the municipal SDF. Depending on

the nature of the infrastructure for the provision of water, it could form part of the zoning within the LUS, for instance a zoning of “utilities” could include a water reservoir.

The municipal SDFs content includes the status of all water and sanitation matters within the municipal area, as well as the projected need and current projects as per the IDP and other government programmes. The SDF typically includes the Water Bulk Supply, piped water access as a percentage of the population, boreholes, all water supply schemes, the functioning water treatment works, the identified infrastructure needs, future or planned water and sanitation projects.

The SDF includes the status of sanitation within the municipal area that include the distribution of households by type of toilet facility (sanitation services), landfill sites and solid waste and their state or capacity, as well as the system in place to maintain the sanitation system. This includes waste management removal, dumping sites (when landfill sites are far away), recycle centres, dust bins and the infrastructure and fleet that supports this system. The projection of the lifespan of the system is also typically included. The LUS also addresses certain facilities as utilities in its zoning with the necessary measures to ensure health and safety together with the appropriate legislation.

3.9.1.5 Electricity services

The National Energy Act 34 of 2008 provides that diverse energy resources are available at affordable prices to support South African economic growth and poverty alleviation. It requires energy planning and the consideration of environmental management adherence, as well as providing for the maintenance and access to energy infrastructure. It requires the establishment of an institution that is responsible for the promotion of efficient generation and consumption of energy (National Energy Act, 2008:2).

The SDF typically will include the information on the percentage (or other manner of indication) of how many households have access to electrical usage in their homes within the municipality, the district municipal area, the province and South Africa in a projection of time over 10 years. It will also refer to any envisaged, planned or related to the need

of new bulk electricity infrastructure, household connections, high mass or streetlights or other related status reports.

The National Energy Regulator Act (NERA) 40 of 2004 (amended August 2024. 38/2024) is purposed to provide for the establishment of a single regulator in South Africa to regulate electricity, petroleum pipelines and gas pipelines. The National Energy Regulator of South Africa (NERSA) was established in terms of Section 3 of NERA. It is purposed to regulate the energy industry in South Africa in accordance with government laws and policies, standards and best practices that are sustainable and orderly (NERSA, 2025). Other related legislation is the Electricity Regulation Act 4 of 2006, the Gas Act 48 of 2001 and the Petroleum Pipelines Act 60 of 2003. The SDF will typically indicate all relevant NERSA licences within the municipal area that relate to the urban areas. The areas outside the urban areas are typically supplied with electricity from Eskom itself. The municipal electricity is provided by Eskom and then distributed by the municipality to the different distribution points and infrastructure within the urban area. This system is based on the old structure of local government, where a municipality consists of the urban area compared to current structure where the municipality can consist of several urban areas (towns) and all the land in between that includes agricultural land. The SDF will indicate the sub-stations, their locations, their capacity, usage and possible upgrades or new planned construction or expansion of the system. In terms of zoning within the LUS, the electricity or other energy related infrastructure will typically be regarded as a “utility” and provision for the zoning functions of this use would have been developed within the LUS. The related land use register will also reflect the utility and its ownership. Part of the register includes Surveyor-General diagrams and maps that indicate servitudes for electrical lines, gas pipes, petroleum pipes and all related infrastructure. Electrical or energy infrastructure would typically be included in the LUS register and official documents.

3.9.1.6 Civil works and storm water

The National Building Regulations and Building Standards Act 103 of 1977 and SANS10400 is a requirement for all buildings and structures. This act is intended to provide for legal uniformity in the erection of buildings in local municipal areas and for the establishment of building standards. This includes the processing of an administrative system within the municipality. All municipalities typically have a department focused on building control. Many of the applications submitted to the building control department would need town and regional planning permission that includes land use control or zoning permission as well. The building control measures form part of the LUS and are indicated for each activity or use and the restrictions or requirements that are related to each use or activity.

3.9.1.7 Housing

The Housing Act 107 of 1997 provides for the sustainable development of human settlements. It provides for general principles that relate to housing development for all spheres of government and assign related roles for housing. It also provides for national housing programmes and funding. It functions based on given principles that must be adhered to that include the priority of housing development for the poor and necessary consultation with affected individuals and communities. It seeks the promotion of adequate housing conditions; the promotion of physical, economic, social and racial integration of rural and urban areas; the management of access to the housing market; addressing gender inequality and other discriminations in the housing development process; promotes higher density; addressing special needs, recreational facilities in residential areas, promote the expression of cultural identity and diversity; consideration of the environmental impact; not inhibiting housing development in rural or urban areas; and promote the Constitution and the bill of rights. It includes the National Housing Code. The role of municipalities relates to the inclusion of municipalities' processes of integrated development planning and ensures that the individuals and communities in the municipal area have access to adequate housing, that the conditions are aligned with health and

safety standards and are serviced with water, electricity, sanitation, roads and stormwater drainage as well as accessible transport in a way that is economically efficient (National Housing Act, 1997). It also requires a municipality to identify and designate specific land areas for housing development and provide bulk engineering services as well as manage the land use development. This Act allows a municipality to administer national housing programmes through approval by the provincial department. It also allows for the expropriation of any land that may be required for the purposes of a housing development for a national housing programme.

3.9.1.8 Integrated Development Planning

SPLUMA defines an Integrated Development Plan (IDP) as a plan adopted in terms of Chapter 5 of the Municipal Systems Act 32 of 2000. Chapter 5 of the Municipal Systems Act entails sections 23-37 (Municipal Systems Act, 2000:36-46) and deals with Integrated Development Planning. This requires that Municipal Planning should be developmentally oriented and fulfil the requirements of the Constitution of 1996 that includes sections 152,153 and the sections that deal with fundamental rights that are sections 24,25,26,27 and 29 (Municipal Systems Act, 2000:36). In Chapter 4 of this thesis, a discussion of Municipal Planning also relates to this section as part of the content of municipal planning. Planning in a municipality must adopt the principle of co-operative governance (as per Section 41 of the Constitution) and must consider national, provincial and surrounding municipalities' development plans (Municipal Systems Act 32 of 2000). The act requires that each municipality or council adopt a single, inclusive and strategic plan for the development of the municipality, which includes the integration and coordination of development proposals in line with the capacity of the municipality, aligned with budget allocations Municipal Systems Act, 2000:36). The content of the integrated development plan (IDP) must include the municipality's long-term development vision that identifies the most critical development and transformation needs; the current state of the development in the municipal area together with the identified communities that still needs access to basic municipal services; aligned national and provincial priorities and objectives; the council's development priorities and objectives that includes aims for local economic

development and internal transformation; an SDF that includes the provision of guidelines for a land use management system for the municipality; disaster management plans; financial plans that represent the budget projection for the next three years; operational strategies; and the key performance indicators and performance targets (Municipal Systems Act, 2000:36). The District Municipalities are also required to create an IDP that includes the integration of the municipalities within its region (Municipal Systems Act, 2000:36), whilst the role of the province is to monitor and support the local government (Municipal Systems Act, 2000:42). The IDP is the primary strategic planning instrument that should guide and inform all planning and development within the municipality (Municipal Systems Act, 2000:44). Though the IDP is the strategic planning instrument, municipalities frequently have their separate IDP departments or related separate departments that are not part of the planning department (Town or Urban and Regional Planning Department). This then also results in separate development decisions made frequently without the involvement of the municipal official professional planners.

3.9.1.9 Disaster Management

The Disaster Management Act 57 of 2002 and its guidelines provide for the necessary Disaster Management Plan for disaster response, classification, funding and declaration. The Disaster Management Plan will typically be held by the municipal Fire Brigade. It provides strategic coordination and other mechanisms to address possible disasters as operational and tactical emergency procedures.

The Disaster Management Act 57 of 2002 provides for the establishment of disaster management centres at a national, provincial and municipal level (Disaster Management Act, 2002:2). The Disaster Management Plan for municipal areas is managed through mechanisms as per Chapter 4 of the Local Government: Municipal Systems Act 32 of 2000 (Disaster Management Act, 2002:52).

There are some uncertainties about the interpretation of Sections 54 and 55 of the Disaster Management Act in local government as it imposes responsibilities for both

district and local municipalities, which may be perceived or interpreted as contradictory or ambiguous.

3.10 Conclusion

SPLUMA transformed the fundamental structure of the land use management system, particularly with aligning itself with the Constitutional requirement of the re-formulated wall-to-wall municipal boundaries in the requirement of the land use scheme to be wall-to-wall and all-inclusive of urban areas, rural areas, agricultural land, border entrances and exits, traditional authorities, nature reserves and parks and more. The significant increase in responsibility of the municipality is confirmed in its authority to make all land use decisions within its boundaries and borders. The impact of this significant transformation and expansion required more consideration to equip the planning system with the necessary capacity.

CHAPTER 4 PRACTICAL IMPLEMENTATION OF THE SPATIAL PLANNING AND LAND USE MANAGEMENT SYSTEM IN SOUTH AFRICA

4.1 Introduction and background

The implementation of the Spatial Planning and Land Use Management system in South Africa is prescribed in SPLUMA. The framework and its background were discussed in Chapter 4. The implementation of SPLUMA was long anticipated by the government after it was promulgated in 2013.

The day that SPLUMA was implemented, 1 July 2015, was a time of crossing a threshold and municipalities had to be “SPLUMA ready”, as it was termed. CoGTA was tasked to assist municipalities in accomplishing SPLUMA readiness, as well as other departments such as the Department of Rural Development and Land Reform, as it was known at that time. For many municipalities, it was uncharted territory, with great administrative implications. All the municipalities had lists of how to be SPLUMA compliant.

For municipalities to become SPLUMA compliant and implement the planning tools that the system prescribes, the municipalities typically issued tenders for service providers to run with the implementation of SPLUMA. One such municipality granted a tender to a Joint Ventured company, of which the researcher was the director of and had first-hand experience of the whole life cycle of the project that implemented a SPLUM system for a Category B municipality in Mpumalanga.

A reflection on the practical implications of the implementation of the SPLUM system is useful to understand the planning system and how it functions. This specific review and discussion of the implementation are subject to a Category B municipality in Mpumalanga was termed specifically in the original request for proposals as the *Nkomazi Municipal Spatial Planning and Land Use Management System*. The project and this system included the following larger tasks:

- Develop and proclaim the municipal spatial planning and land use management by-law.
- Develop and proclaim a municipal wall-to-wall land use management scheme.
- The revision and creation of the Spatial Development Framework (SDF).
- Develop and implement an Electronic Land Use Management System.

The mentioned system includes the facilitation of the Municipal Planning Tribunal (MPT), which is in line with the system as per SPLUMA as discussed in Chapter 3³⁹.

The purpose of the project was to develop the Spatial Planning and Land Use Management System for the local municipality and to ensure the implementation of SPLUMA and operation of SPLUMA within the municipality; to set the standard for this system within the municipality; to further the municipal vision to empower communities through excellent service delivery and enhance the core values of the municipality, which are accountability, good governance, transparency, integrity and responsiveness. The project brief envisaged that the Spatial Planning and Land Use Management System (SPLUMS), which includes the Land Use Scheme, would enhance the development capacity of the municipality and create a path to being more effective and equitable in growth and development.

The Project consisted of six distinct elements, these being:

- Revision and adoption of the Nkomazi Spatial Development Framework.
- Develop and proclaim the Municipal Spatial Planning and Land Use Management By-law and facilitate the establishment of the MPT.
- Develop and proclaim the Municipal wall-to-wall Land Use Scheme.
- Develop and implement an Electronic Land Use Management System; and
- Build capacity and transfer skills.

³⁹ The SPLUM system includes the SDF, wall-to-wall Land Use Scheme, subsequent administrative processes and procedures as per the by-law and the decision-making body in the MPT.

An additional scope of work was added later to write reports on applications for the MPT to consider over a period of two years.

The project that implemented the Spatial Planning and Land Use Management System for the Category B municipality was subject to the legislative framework as discussed in Chapter 4. The municipality was subject to different kinds of planning legislation, land use management was fragmented and that created development patterns that did not promote integration and sustainability of social, economic and environmental elements. This also created unco-ordinated and uncertain institutional arrangements that resulted in confusing systems and planning procedures within the municipality.

The acceptance of the tender offer was issued on 26 June 2015, a week before SPLUMA would be implemented on 1 July 2015, though it was previously anticipated to be on the 1st of September 2014. The commencement date of the implementation of SPLUMA was published on 27 May 2015. Municipalities across the country were working towards becoming SPLUMA-aligned and the provinces or provincial departments, especially the Department of Cooperative Government and Traditional Affairs, as well as the then Department of Rural Development and Land Reform⁴⁰, assisted the local municipalities with this transition. It also forms part of the Constitutional Mandate in the Schedule 4 Functional Areas of Concurrent National and Provincial Legislative Competence in terms of the Constitution of the Republic of South Africa, Act 108 of 1996, Urban and Rural Development is a concurrent competency that cascades through to all spheres of government and the National Department of Land Affairs⁴¹ has to play an oversight role to assist the other spheres of government with regards to Land Use and Municipal Planning.

⁴⁰ This department was restructured and is currently known as the Department of Agriculture, Land Reform and Rural Development.

⁴¹ This department currently forms part of the Department of Agriculture, Land Reform and Rural Development.

The long-awaited implementation of SPLUMA required significant preparation by different government departments.

4.2 The anticipation of the implementation of SPLUMA

The then Department of Rural Development and Land Reform presented key challenges and proposals for SPLUMA implementation in September 2014 at the 8th National SALGA MM Forum Programme in anticipation of the date that SPLUMA would become effective, as well as put in place the publication of the SPLUMA Regulations, after SPLUMA had been promulgated in 2013. The key issues raised in the presentation included the discussion of key assumptions and possible changes required by SPLUMA; the steps that should be taken to bring SPLUMA into operation; the mandates for SPLUMA implementation; a discussion on high level processes for SPLUMA Readiness; and possibilities on how to streamline MPT's (DRDLR, 2014).

The initial issues mentioned in this discussion were the following:

- SPLUMA was published on 5 August 2013 and has not been in operation yet.
- There has been unwillingness from management in local government to accept planning as a statutory function.
- There has been a shortage of precise information about municipalities' planning and employee capacity.
- The new personnel and institutional requirements, for instance the MPT, was not included in the municipal budgets for the 2015-2016 financial years.
- Uneasiness and uncertainty over the position of national and current provincial planning legislation exist.
- There is limited knowledgeable planning capacity in municipalities that will have insight into what the implications of the implementation of SPLUMA will be.
- There is resistance to change among provincial and local government officials.

- The breach of the Constitutional Court judgement that required the operationalisation of legislation, such as SPLUMA, by 17 June 2012 creates a problem.
- There has been a widespread lack of planning legislation all over the country, in the sections that manage development applications (DRDLR, 2014).

It has been noted that even though the implementation of SPLUMA was long-awaited, the budget was not calculated or anticipated for the implementation date. The government identified the fact that the 'how' of implementation and the stance in terms of legislation were uncertain. Furthermore, and crucially, it was highlighted that the municipal capacity could not be determined.

The given report of the DRDLR and further discussion reviewed the content of SPLUMA. It mentioned the following assumptions that are said to be underlying the SPLUMA implementation plan:

- It (SPLUMA implementation) facilitates complex and significant changes, specifically in the Municipal sphere of government.
- It addresses the strategic priorities of government.
- The implementation of SPLUMA is sensitive, meaning that it has many stakeholders that include government entities, standing mandates, encompasses urban and rural land, it has an economic, environmental and social impact, and addresses the volatile constitutional court ruling of 2010.
- These issues need immediate implementation.
- The new delivery system or systems are complex.
- It was developed over a short period of time (DRDLR, 2014).

These assumptions are correct in that the implementation of SPLUMA assumed that the complexity of the structural and administrative changes would be difficult to deliver. Municipalities had to develop their own administrative organisation to address the implementation of SPLUMA. Provincial Government Departments did assist, such as

CoGTA, although much more thought should have gone into the structural changes in the administration of SPLUMA that relates to capacity, records and budget. The immediate implementation should perhaps have been reconsidered to ensure a sound budget and determination of structural capacity in the light of the restructured municipalities and addition of vast administrative planning responsibilities. The report further indicated what fundamental changes had been made by SPLUMA.

The report and discussion indicated seven fundamental changes that SPLUMA brings within the spatial planning and land use management system. They are:

- Municipalities are the body of first instance for land development and land use management that is part of municipal planning, that implies that municipalities have the authority over decision-making for the mentioned planning.
- Establishing Municipal Planning Tribunals (MPTs) and its structures as the decision-making body for land development applications, that includes the provision of appeal structures.
- The requirement of the development of a wall-to-wall land use scheme that includes all land areas within the municipality to be included in the land use scheme.
- The development of Spatial Development Frameworks in all government spheres that should be guided by the development principles in SPLUMA.
- Enforcement, compliance and monitoring process requirements through intergovernmental support.
- Alignment of authorisation processes where needed and associated to legislation and policies that influence land development applications, as well as decision-making processes.

The fundamental changes brought about by SPLUMA within the planning system established the municipality as the body of first instance, which was the accomplishment and clarification that were brought in through the Constitutional Court ruling from 2010 that was discussed in Chapter 3, as well as an indirect accomplishment of the Constitution

of 1996 that required the entire country to be covered by a municipality and in this sense, the Land Use Scheme. It brought about the necessary and long-awaited umbrella legislation to restructure the planning system. The implementation of the legislation serves as the next step in this accomplishment.

The DRDLR anticipated the re-engineering of Municipal Planning by identifying certain changes that will be required to implement SPLUMA. To implement the expected changes, the Municipalities are expected to:

- Determine the tribunal (MPT) structure by establishing its own or becoming part of a Joint Municipal Planning Tribunal with other municipalities, if capacity is an issue.
- Categorise land development applications into the decision-making process that would be determined by either the MPT or the referred authorised municipal official.
- Decide on the appeals structure within the provisions of SPLUMA, which could be within the executive authority of the municipality or an external institution or association.
- Revise delegations and the promulgation of new delegations.
- Review tariffs that are related to land development and land use management processes.
- Handle the appointment of MPT members.
- Determine the current capacity of human resources and finances or budget for the appointment of MPT members, MPT meetings, publication of notices and more.
- Establish the Land Use Management System (LUMS) effectively (DRDLR, 2014).

The government indicated a larger framework for the implementation of the planning system and what it would need, although it did not address the structural capacity and perhaps could not address the budget issue to accommodate the transition and establishment of the planning system.



Figure 19: This figure indicates the SPLUMA commencement steps as indicated by the Department of Rural Development and Land Reform in 2014 (DRDLR, 2014)

The DRDLR (2014) indicated that they had conducted a review of the then planning process and identified the shortages that municipalities have in terms of the SPLUMA requirements. The main shortages, as indicated, were the capacity and the institutional structures (DRDLR, 2014). The breakdown of the lack of capacity and insufficient institutional structures was not defined sufficiently. The problem of capacity and institutional structures was indicated after reviewing the statutory development application process, the SDFs, LUS, Precinct Plans, IDPs and the GIS. The DRDLR determined that what generally did work sufficiently were the SDFs, although it needed upgrading to SPLUMA requirements; the LUS preparation was sufficient, as well as the receiving of development applications. What did not work well and was found to be only partly efficient, as their finding, was the processing of development applications after registration of the applications, which implies the notice of the application and the three

different decision-making authorities within SPLUMA that includes the MPT, the designated officer, as well as the complete council (DRDLR, 2014). The DRDLR (2014), indicated that after their assessment of the gaps in the planning process, that their focus should be on the institutional organisation that relates to planning applications and the functioning of the MPT to prepare for SPLUMA readiness (DRDLR, 2014). This prompted the determination of steps necessary to establish the needed MPT's for all municipalities and its related functioning and enabling systems. This included the preparation of SPLUM aligned by-laws, determining delegation officers, preparing tariffs, determining the operational structure of the MPT and establishing a structure for an Appeal Authority, together with establishing municipal cooperation (DRDLR, 2014). The specific indication to the issue of capacity is different to the reference to the gap of structural capacity caused by the restructuring of municipalities. It is good to build individual capacity, although it is more important to address the historic structural capacity for the planning system, first.

The DRDLR (2014), after identifying their main issues with the planning system, worked out a step-by-step process to establish the cooperation of municipalities to mechanise the planning system. The steps included the initial preparation that would involve a meeting with the municipal manager or city manager, a district meeting with the local municipalities, their own recommendations for the municipalities in context, a municipal official who could prepare a council report, all Municipal Managers to have agreed on the compiled report and then the MM would hold a council meeting in this regard where the next phase would be to gain the political municipal structure's approval and cooperation and decide on a cooperation model that had to be approved by council. The MM should then distribute a letter to the agreeing municipalities that were cooperating and publish this in the Provincial Gazette and the relevant newspaper (DRLDR, 2014). The DRDLR's approach largely anticipated and supported Joint Municipal Planning Tribunals as can be seen in the table below in preference to individual MPTs.

PROPOSALS FOR JOINT MUNICIPAL TRIBUNALS					
PROVINCE	No of Municipalities	JMPTs (District)	JMPTs (Neighbouring LMs)	MPTs	Possible vs proposed
Eastern Cape	37 LMs (6 DMs) 2 Metros	6	0	2	39 vs 8
Kwa Zulu Natal	50 LMs (10 DMs) 1 Metro	6	4	4	51 vs 14
Northern Cape	27 LMs (5 DMs)	2	5	1	27 vs 8
Western Cape	25 LMs (5 DMs) 1 Metro	1	8	1	26 vs 10
North West	19 LMs (4 DMs)	3	2	1	19 vs 6
Limpopo	25 LMs (5 DMs)	5	0	0	25 vs 5
Free State	20 LMs (4 DMs)	4	0	1	20 vs 5
Mpumalanga	18 LMs (3 DMs)	0	6	2	18 vs 8
Gauteng	7LMs (2 DMs) 3 Metros	2	0	3	10 vs 5
					235 vs 69

Table 15: This figure indicates the approach of the Department of Rural Development and Land Reform in 2014 to the anticipated and best practice for establishing Municipal Planning Tribunals (MPTs) in the form of Joint Municipal Planning Tribunals rather than individual MPTs.

Source: DRDLR, 2014

This figure indicates the approach of the Department of Rural Development and Land Reform in 2014 to the anticipated and best practice for establishing Municipal Planning Tribunals (MPTs) in the form of Joint Municipal Planning Tribunals rather than individual MPTs (DRDLR, 2014).

The preparation for the implementation of SPLUMA was done to a certain extent and the implementation itself after the 1st of July 2015 was discussed in Chapter 3 and from Section 4.3 till 4.6 below. It has been just over ten years since SPLUMA has been implemented and it has become time for the government to review the implementation of SPLUMA.

4.3 Ten years after the implementation of SPLUMA

In anticipation of a ten-year review after the implementation of SPLUMA on 1 July 2015, the Department of Agriculture, Land Reform and Rural Development (DALRRD) convened a portfolio committee to review the framework and implementation of the Spatial Planning and Land Use Management Act 16 of 2013 in February 2024. The purpose of the review of SPLUMA was and currently is to review the framework and

implementation of SPLUMA, to determine the implementation problems and consider different ways to improve spatial planning and land use management in South Africa (DALRRD, 2024). The initiating meeting was held on 5 March 2024 that was briefed by DALRRD and SALGA and chaired by Nkosi Mandela. The Parliamentary Monitoring Group wrote the minutes of the meeting's proceedings.

The background and context were set by the DALRRD by reviewing a chronological timeline of the planning system from before 1994 until February 2024. The briefing indicated that some of the aspects that focused on the implementation of SPLUMA included customisation, the publication of SPLUMA-compliant by-laws, development, the establishment of Municipal Planning Tribunals (MPT's), and the development of the National SDF.

The following compliance statistics were determined in relation to the National Spatial Development Framework:

- Municipalities with compliant Land Use Schemes: 87%,
- Compliant SDFs: 51% of municipalities,
- Established MPTs: 96% (DALRRD, 2024).

The briefing indicated probable deficiencies in SPLUMA as the Act and its regulations unrolled. Some of the issues identified in the implementation of SPLUMA included:

- Inadequate capacity within local government,
- the lack of urgency to prioritise spatial planning and land use management issues,
- funding of Land Use Schemes,
- funding of SDFs,
- human resources to implement SPLUMA,
- funding of MPT sittings.
- the management of change of the Land Use Regulator formation,
- the resistance of traditional authorities to implement SPLUMA,
- legal complications; and

- the amalgamation of municipalities (DALRRD, 2024).

It can be argued that all the above issues are directly and indirectly related to the structural changes in municipalities and the planning system. Without addressing the structural capacity, all the above issues will remain an issue, and it will most probably not be possible to have a fully functional and efficient planning system.

The South African Local Government Association (SALGA), in turn, addressed the need to empower municipalities to promote spatial inclusion and the related economic transformation. SALGA discussed their *Spatial Transformation Barometer Report* that reflected on:

- land use management actions and outcomes,
- how SPLUMA impacted progress in spatial transformation,
- how SPLUMA impacted spatial planning,
- the improved land use management in the local government domain, as well as
- the challenges that were faced and how they were addressed,
- intergovernmental cooperation and coordination towards improving spatial planning and land use management, and
- proposed solutions to the existing challenges and recommendations to attain the desired spatial transformation (DALRRD, 2024).

The Spatial Transformation Barometer, as deliberated by SALGA, chose only a few sources in literature to reflect on proposals to address spatial transformation - these mainly focus on spatial justice and inequality and are fundamentally negative towards the regulation of land use (SALGA, 2022:16). This follows the pattern discussed in Chapter 2.4 that relates to narratives that are typically criticising planning and discusses how wrong it is, but do not provide concrete solutions or considerations of solutions within planning. It does not address practical and structural issues at hand. The main points raised already form part of the planning process that includes:

- Participation and engagement: the structure of municipalities into wards allows for better communication and transmission of the local voice to the government and public participation is essential in any planning application, development, the development of a LUS, development or review of the SDF, the review of the IDP and more,
- Address regional inequality: this forms part of the SPLUMA development principles that requires spatial justice. Such a matter relates to context and does not bear substance if it is just mentioned that this should be done. The SDF must indicate the informal settlements, and it is part and parcel of addressing spatial inequality.

The report also mentions pro-poor, differentiated and targeted policies, improving access to employment and skills, security of tenure, increased flexibility in planning and then also a call for reduced regulation of land use (SALGA, 2022:16). Some of these issues are well known and certainly important on an influential platform though frequently these statements are just repeated as a narrative. It does not provide solutions or even look at the system. An example is informal settlements.

Informal settlements are mentioned in the report and indicate that the focus of a certain municipality's SDF on a certain informal settlement to formalise the informal settlement to secure tenure and provide access to the economic opportunities that the area holds, as well as to provide basic services (SALGA, 2022:16). This is typically what municipalities do, to formalise certain identified informal settlements and identify areas for residential settlement to address the housing issue. This has been a process since 1991, as indicated by the Less Formal Township Establishment Act 113 of 1991 and the Upgrading of Land Tenure Rights Act 112 of 1991, as well as the intention of the Development Facilitation Act of 1995, which failed as it was intended to. Furthermore, the planning system is much more complex than this. It requires the involvement of the related community and an informed context. Not all communities would like to be formalised, and this is at times an assumption. Certain communities would like to have a formal title deed and individual ownership. Transformation is an important factor in the

planning system, though what transformation is could perhaps be assumed instead of determined.

The report explains difficulties that were encountered by municipalities in the light of spatial transformation by means of four aspects (SALGA, 2022:22):

- Authority and influence over other actors
- Bulk infrastructure
- Delays due to complex administrative requirements
- Costs and budget availability

The indicated difficulties are prevalent across the country, although the administrative system and integrated planning system should have a different focus in addressing the identified issues. It is also important to understand the relevance and necessity of the planning system and subsequent administration to value it and what it can and should accomplish.

The SPLUM system that was implemented through a project from 2015 through to 2019, involved the establishment of the SPLUM by-law, the development of the wall-to-wall Land Use Scheme and the review and integration of the Spatial Development Framework (SDF) for a Category B municipality in Mpumalanga.

4.4 SPLUM by-law

4.4.1 Introduction

The SPLUMA implementation project required, firstly, to establish the Municipal Planning Tribunal (MPT) as part of the “SPLUMA Readiness” campaign of the Department of Rural Development and Land Reform, as well as CoGTA. This directly related to the establishment of the relevant by-law that would prescribe the establishment of the MPT for the specific municipality, the administration thereof, the process of the SDF and its establishment, the establishment of the wall-to-wall Land Use Scheme and its SPLUMA requirements, the different types of applications and their procedures, that includes:

- Township establishments and/or extension of boundaries of a Township.
- Rezoning of land.
- Removal, amendment or suspension of restrictive or obsolete condition, servitude or reservation registered against the title of land.
- Amendment or cancellation of General Plan.
- Subdivision and consolidation.
- Permanent closure of a public place.
- Consent to use.
- Land use in communal land.

Furthermore, the by-law had to include consideration for engineering services and development charges and establish an appeal structure. Additionally, it also addressed compliance and enforcement of the by-law.

CoGTA employed an external service provider to generate a generic by-law that was sent to all municipalities within Mpumalanga for their consideration. This draft was released on 15 July 2015. The municipality had the choice to adapt and use it or to generate their own Spatial Planning and Land Use Management by-law. The appointed service provider would employ the services of a registered attorney to review the by-law and amend it according to the context of the municipality. This had to happen relatively quickly, within approximately four months to establish the municipality's planning system. After the adaptation of the by-law, it had to be approved by the municipality, after which it had to be published in the government gazette, the Provincial Gazette. The Spatial Planning and Land Use Management By-Law for this Category B municipality was proclaimed on 1 December 2015. Figure 4.2 below indicates the quotation for the promulgation of the by-law. This was rather expensive at R101 762.35 in 2015, when it is considered that all municipalities had to promulgate their by-laws that would have added the additional cost of being reviewed and amended by a registered attorney. There are 257 municipalities in South Africa.



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Figure 20: Quotation for the promulgation of a typical SPLUM by-law

Source: researcher archive as received from Government Printing Works, 2015

4.4.2 Process and facilitation

The table below is an actual example used by the Department of Rural Development and Land Reform at the time to indicate SPLUMA readiness for a Category B municipality in Mpumalanga. A key target of Municipal readiness was establishing the land use management and development decision-making body – the Municipal Planning Tribunal (MPT) as it is prescribed by SPLUMA in Chapter 6, together with the Regulations in terms of SPLUMA, that was published on 23 March 2015, shortly before the implementation of SPLUMA. Table 4.1 below is sectioned into seven sections. If the relevant municipality had to form a Joint MPT, they had to complete sections 1, 2, 4 and 5. If the municipality were to form their own MPT, they would have to complete Sections 3,4 and 5. It was the initial establishment of the MPT that involved the Municipal Manager placing a call for MPT members through advertisements in the newspaper and the Provincial Government Gazette and then later publishing the successful members. It also involved the delegation structure, establishing the operational function of the MPT, the preparation of the related by-law and the setting of tariffs for applications.

The first objective of the implementation was to establish the decision-making system for planning applications, how they are operated and what is considered in applications, together with establishing the appropriate external and internal members to facilitate the decision-making processes. Central to this was the establishment of the Spatial Planning and Land Use Management By-Law.

Table 16: Department of Rural Development and Land Reform at the time to indicate SPLUMA readiness for a Category B municipality in Mpumalanga

MUNICIPAL READINESS REPORT ESTABLISHMENT OF MUNICIPAL PLANNING TRIBUNAL AND DELEGATION				
PROVINCE: Mpumalanga		 rural development & land reform Department: Rural Development and Land Reform REPUBLIC OF SOUTH AFRICA		
MUNICIPAL NAME:				
MDB CODE:				
If municipality is establishing a Municipal Planning Tribunal then complete sections 3, 4 and 5. If municipality is establishing a <i>Joint</i> Municipal Planning Tribunal then complete sections 1, 2, 4 and 5.				
SECTION 1				
1. Municipal Cooperation	Step 1 Preparation	1.1	Internal meeting to assess capacity held by MM	
		1.2	Meeting of all locals held by district	
		1.3	Recommended option for municipal cooperation prepared by officials	
		1.4	An official has been delegated from one of the municipalities to prepare a Council report	
		1.5	All affected municipal MMs have agreed to the report	
		1.6	MM has requested a special council meeting be called	
	Step 2 Council Decision	1.7	Joint meeting of political structures was held in order to reach an agreement on cooperation	
		1.8	Council has held a meeting to decided on cooperation model	
		1.9	Council have approved the letter agreeing to the cooperation	
	Step 3 Finalisation	1.10	MM has circulated letter to affected municipalities agreeing to the cooperation	
		1.11	Notice for the provincial gazette has been prepared	
		1.12	MM has published a notice in provincial gazette	
		1.13	An Advert has been prepared for local newspaper	
		1.14	An Advert has been published in a local newspaper in municipal area	
SECTION 2				
2. Establishing Joint Municipal Tribunal	Step 1 Calling for applications	2.1	Designated MM or officials have prepared an advert calling for applications JMPT	
		2.2	Advert has been circulated to all affected municipalities for approval	
		2.3	Affected MMs have given approval for advert	
		2.4	Advert has been published in a local newspaper	
		2.5	Advert has been published in a newspaper widely distributed in the province	
	Step 2: Evaluating the applications	2.6	Criteria for evaluation of applications has been prepared by the designated official	
		2.7	Task team has established the affected municipalities to evaluate the applications	
		2.8	Task team has evaluated applications	
		2.9	Report has been prepared outlining the recommended persons to be appointed	
		2.10	Report on the municipal officials has been appointed to tribunal including identification of chair etc	
		2.11	All affected municipal MMs have agreed to the report	
		2.12	Designated official has prepared a report outlining the terms and conditions of appointment	
	Step 3 Council Decision	2.13	MM has requested a special council meeting be called	
		2.14	Joint meeting of political structures has been held to reach agreement on the persons recommended	
		2.15	Joint meeting of political structures has been held to reach agreement on the terms and conditions of appointment	
		2.16	Council has formally consider the report	
		2.17	Council has given approval of names of persons to be appointed	
	Step 4: Publishing the notice	2.18	All successful JMPT members have been notified	
		2.19	Successful JMPT has accepted nomination in writing	
		2.20	Designated official has prepared notice for the establishment of the tribunal	
		2.21	Affected MMs have given approval to content of the notice	
		2.22	Notice submitted for publication	
		2.23	Affected MMs have published the notice in the provincial gazette	
SECTION 3				
3. Establishing Municipal Tribunal	Step 1 Calling for applications	3.1	MM or designated official has preared an advert calling for applications MPT	YES
		3.2	Advert has been published in a local newspaper	YES
		3.3	Advert has been published in a newspaper widely distributed in the province	YES
	Step 2: Evaluating the applications	3.4	Criteria for evaluation applications to has been prepared by the designated official	YES
		3.5	Task team has been established to evaluate the applications	YES
		3.6	Task team has evaluated applications	YES
		3.7	Report has been prepared outlining the recommended persons to be appointed	YES
		3.8	Report on the municipal officials has been appointed to tribunal including identification of chair etc	PARTIAL
		3.9	Designated official has prepared a report outlining the terms and conditions of appointment	PARTIAL
	Step 3 Council Decision	3.10	MM has requested a special council meeting be called	YES
		3.11	Council has formally consider the reports	YES
		3.12	Council has given approval of names of persons to be appointed	YES
	Step 4: Publishing the notice	3.13	All successful MPT members have been notified	YES
		3.14	Successful MPT has accepted nomination in writing	YES
		3.15	MPT members have signed contracts	NO
3.16		Designated official has prepared notice re the establishment of the tribunal	PARTIAL	
3.17		Notice submitted for publication	NO	
3.18		MM has published the notice in the provincial gazette	NO	

SECTION 4				
4. Managing Delegations	Step 1: Preparation of Report	4.1	Any existing delegations relating to municipal planning have been reviewed	YES
		4.2	A report has been prepared outlining the delegation of authority for considering planning applications	YES
		4.3	The report has circulated for comment to affected departments and municipalities	YES
		4.4	The report on delegations has been completed	YES
	Step 2: Approval	4.5	If a JMPT, a meeting of political structures was held to agree on the content of the delegations	
		4.6	Report submitted to Council for consideration	YES
		4.7	The report on delegations has been submitted to Council/s for approval	YES
SECTION 5				
5. Operations of the Municipal Planning Tribunal	Step 1A: Preparations JMPT	5.1	Case of JMPT, each municipality has agreed on the contribution made toward the administrative structure	
		5.2	Preparation of the administrative structure has been proposed	
		5.3	Report has been drafted on the proposed structure	
		5.4	Detailed costing for the establishment of JMPT including municipal contribution	
		5.5	Draft MoU for the establishment of the administrative structure has been prepared	
		5.6	Report has been circulated for comment on the administrative structure	
		5.7	Draft MoU circulated for comments by affected municipalities	
		5.8	Affected Municipal Managers to meet and agree on administrative report and MoU	
		5.9	Report submitted for Council approval	
		5.10	Special Council Meeting was held to approve the administrative structure	
		5.11	MoU signed by all affected municipalities	
		5.12	Procedures for the processing of applications has been heard by the (J)MPT to be established	
		5.13	The process and procedures for calling (J)MPT hearing has been established	
	Step 1B: Preparations MPT	5.14	Preparation of the proposed administrative structure complete	YES
		5.15	Report has been drafted on the proposed structure	PARTIAL
		5.16	Report has circulated for comment on the administrative structure	NO
		5.17	Report has been submitted for Council approval	NO
		5.18	Special Council Meeting was held to approve the administrative structure	NO
		5.19	Procedures for the processing of applications have been heard by the MPT to be established	NO
		5.20	The process and procedures for calling MPT hearing has been established	NO
		5.21	The procedures for the circulation of documents to members of the Tribunal has been established	NO
	Step 2: Managing proceedings	5.22	Training programme has been established for MPT or JMPT members	PARTIAL
		5.23	The procedure followed for the appointment of the presiding officer has been determined	NO
		5.24	The terms of reference for the MPTs have been prepared	NO
		5.25	Process has been put in place in which all members of the tribunal are aware of the code of conduct	PARTIAL
		5.26	Process and procedure has been put in place for conducting investigations (Section 40(7)(d))	NO
		5.27	Process for the determination of the technical advisors has been prepared (Section 40(7)(g))	NO
		5.28	Process and procedure are in place for keeping a record of the hearings (Section 40(5))	NO
		5.29	Process and procedures are in place for ensuring compliance with Section 42 - Deciding applications	NO
		5.30	Mechanisms are in place to facilitate the intervention by an interested party in an application	NO
		Step 3 Post Hearing Management	5.31	Procedures are in place for the notification of the Surveyor - General Section 46(1)(b)
	5.32		Procedures are in place for the notification of the Registrar of Deeds - Section 46(1)a	NO
	5.33		Procedures are in place for the notification of the Registrar of Deeds - Section 47(4)	NO
	5.34		Process is in place for monitoring conditional approvals granted (Section 43)	NO
SECTION 6				
6 Preparation of By-laws	Step 1: Initiating the process	6.1	Report has been prepared for the MM to introduce the intention to prepare by-laws	YES
		6.2	Council has approved the commencement of the by-laws process	YES
	Step 2: Draft by-laws including council approval	6.3	Any existing by-laws in relation to municipal planning have been reviewed	
		6.4	Draft of by-laws for the municipality in compliance with the Municipal Systems Act 32 of 2000 has been prepared	YES
		6.5	Draft has been circulated to affected municipalities and departments for comments	NO
		6.6	Draft by-laws to council for consideration have been submitted	YES
		6.7	Special Council has consider draft by-laws and public participation process	YES
		6.8	The by-laws have been published for public comment in provincial gazette and local newspaper	YES
	Step 3: Public Consultation	6.9	Public has been consulted on the content of the by-laws	YES
		6.10	A report on the comments received has been compiled	YES
		6.11	The standardisation of by-laws for all municipalities affected by a joint MPT have been facilitated	
	Step 4: Council Approval	6.12	By-laws have been submitted to council for adoption	YES
		6.13	Council has approved the by-laws	YES
		6.14	By-laws have been published in Provincial Gazette - to be compliant with the Municipal Systems Act	NO
SECTION 7				
7. Setting of Tariffs	Step 1: Preparation of Report	7.1	Any existing tariffs relating to municipal planning have been reviewed	YES
		7.2	A report has been prepared outlining the proposed tariffs	YES
		7.3	The tariff report has been circulated for comment to affected departments and municipalities	YES
		7.4	The report on proposed tariffs has been completed	YES
	Step 2: Approval	7.5	If a JMPT, a meeting of political structures has been held to agree on the proposed tariffs	
		7.6	Report has been submitted to Council for consideration	YES
		7.7	The report on tariffs has been submitted to Council/s for approval	YES
		7.8	Tariffs have been published in the provincial gazette	NO
		7.7	The report on tariffs has been submitted to Council/s for approval	
		7.8	Tariffs have been published in the provincial gazette	

4.5 The land use management system

4.5.1 Introduction

Land use management involves the legislative, contextual, technical and political processes concerned with land. The management framework is informed by the alignment of policies and legislation from different spheres of government and is effectively implemented, managed and maintained by the relevant municipality. Land use management could be divided into current land uses and future land uses. The current land use is related to the typical term land use management, while future land use is attributed to strategic (land use) planning or spatial planning.

The current legislative framework provides the local municipality with the authority and responsibility to manage all land use activity and land use rights on properties within its jurisdiction. The Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013 was implemented on the 1st of July 2015 and provided the local municipality as authority over all the land within its municipal borders, being urban or rural. SPLUMA, national legislation, also serves as the fundamental legislation for the management of land use in the country. It allows for local municipalities to draft and proclaim their own by-laws, being in line with SPLUMA, which entails stipulations and processes for land use management and spatial planning for the related area.

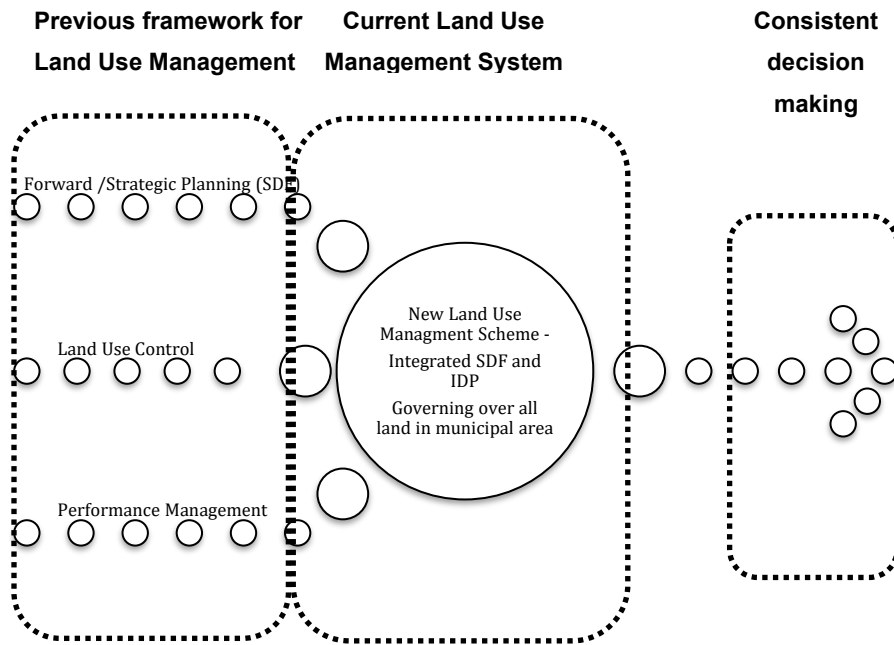


Figure 21: Transition from the previous land use management system to the current planning system

Previous land use management systems handled and regarded strategic or spatial planning, principles and policies separately, although it was used together. The previous land use schemes and/or management also focussed on areas within the urban edge, which were governed by the local municipality. The current land use management scheme and system allow governance over urban and rural land to the local municipality. The newly developed schemes permit integration with the related SDF and the IDP, to accommodate consistent decision making.

The Spatial Planning and Land Use Management Act (SPLUMA) 16 of 2013 defines the following:

- **“land use”** means the purpose for which land is or may be used lawfully in terms of a land use scheme, existing scheme or in terms of any other authorisation, permit or consent issued by a competent authority, and includes any conditions related to such land use purposes,
- **“land use management system”** means the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures,

- **“land use scheme”** means the documents referred to in Chapter 5 of SPLUMA for the regulation of land use.

The land use management scheme forms part of the land use management system for the municipality. The land use scheme is a legal document and serves an administrative purpose in the management of land and development. The related policies, legislation, vision, strategies and principles are built into the framework of the land use scheme. This entails the relation of the Integrated Development Plan (IDP) and the Spatial Development Framework (SDF) to accomplish sustainable human settlements and improve the quality of life.

The land use management scheme could be divided into three larger groups, which are the Scheme Clauses, the Scheme Map and the Land Use Register. The Scheme clauses come in the form of a document which includes the definitions of land uses and the land use management matrix derived from the classifications and definitions. The Scheme or Zoning map is a spatial representation of the different classification of zones. The Register of Land Use rights is the subject content of the scheme and indicate the current land use or zoning of each property within the municipal area (see Figure below).

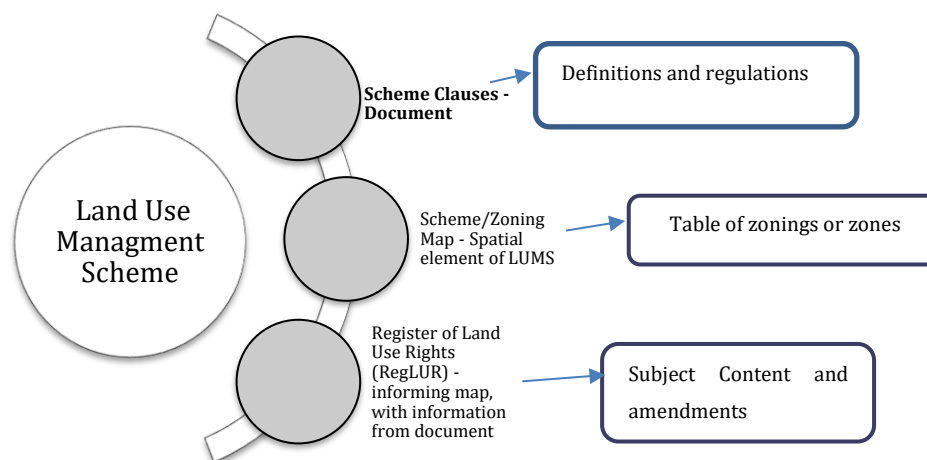


Figure 22: The Land Use Scheme components according to SPLUMA section 25(2): Scheme Clauses, Scheme Map, and Register of Land Use Rights.

The requirements of the new land use scheme were used and addressed the local context – this entailed the management of issues which was identified to be addressed and included in the formation of the scheme in collaboration with stakeholders. This entailed the use and classifications, and therefore provision of the traditional areas, the proposed Special Economic Zone, Marloth Park etc., within the context of this specific developed scheme.

The old Town Planning Schemes that were previously used within the municipal area contributed to the integration of the context and the implications for the developed land use scheme with the aim to establish the framework of the scheme in terms of legislation, concepts, definitions, classifications. These included recommendations based on standards.

Introducing a new planning system that was based on the relatively new legislation at the time, took tremendous organisation from the municipalities side, whilst still having to address the applications that were submitted through the previous planning system. Some municipalities already had a backlog of 400 applications before SPLUMA was implemented and it could be argued as a safe assumption that other municipalities also had a certain backlog of planning applications.

The area that entailed the development of the subject wall-to-wall land use scheme was within the eastern edge of the Mpumalanga Province. The Nkomazi Local Municipal area is and was bordered by the Eswatini and Mbombela City Municipality (then it was the Mbombela Municipality and the Umjindi Municipality that were amalgamated in the relatively recent past years) on the south and the west, the Kruger National Park and Bushbuckridge Local Municipality in the North, Mozambique on the east side of its municipal borders.

The Nkomazi municipal area includes various urban areas, traditional areas, activity nodes, transport corridor, tourism nodes and area, as well as activity corridors.

The Urban areas in Nkomazi Local Municipal area are Malelane, Kaapmuiden, Hectorspruit, Schoemansdal, Komatipoort, KaMaqhekeza, Tonga A, B and C, and KaMlushwa.

Nkomazi hosts the following activity nodes:

- Primary Activity Nodes: Malelane, and Komatipoort.
- Secondary Activity Nodes: Schoemansdal, KaMhlushwa, KaMaqhekeza (Tonga A, B, and C) and Hectorspruit.

Activity and Transport corridors were formed within the Nkomazi Local Municipal area. The inherent Transportation Corridor runs along the N4 Highway and the Maputo Railway line. The transportation corridor includes the primary activity nodes of Malelane and Komatipoort.

The Activity Corridors include the Schoemansdal-KaMhlushwa-KaMaqhekeza Activity Corridor and the KaMaqhekeza-Masibekela Activity Corridor and railway line. The Schoemansdal-KaMhlushwa-KaMaqhekeza Activity Corridor includes Activity Nodes Schoemansdal, Kamhlushwa and Kamaqh

keza. The KaMaqhekeza-Masibekela Activity Corridor and railway line consists of dispersed urban, semi-urban and rural settlements stretching from Managing Border Post to KaMaqhekeza.

The Nkomazi Local Municipal area includes the following Tourism Nodes and Tourism Areas:

- Malelane Gate, which includes Leopard Creek Hotel and Golf Estate, Lala Palm Country Club and Golf Course and Pestana Lodge.
- Marloth Park.

- The N4 Corridor area attracts numerous tourism establishments that benefit from the high traffic volumes between South Africa and Mozambique. Numerous lodges, restaurants and hotels have developed along the N4 Corridor, including nature and game reserves.
- Lake Matsamo also offers tourism and recreational potential.
- Masibekela Dam and Wetlands also present tourism opportunities related to the Samora Machel Memorial, Bambanani-Mlambo “Hole in the Wall” and naturally occurring cycads at Mbuzini.
- The abundant conservancy areas, nature reserves, and game reserves offer numerous opportunities for conservation, eco-tourism, hunting safaris and breeding opportunities.
- Potential for eco-tourism in rural areas.

Rural settlements in the Nkomazi area could be regarded as unplanned areas where subsistence farming take place.

Nkomazi have inherently eight traditional authority areas, as indicated in the table below.

Table 17: Traditional authorities within the Nkomazi Municipal area

	TRADITIONAL AUTHORITY	SETTLEMENT AREA
1.	MLAMBO TRIBAL AUTHORITY	Mozini, Samora Park, Emacambeni, Mbangwane, Ekusulukeni, Khombaso, Tsambokhulu, Mananga, Masibekela, Mandulo, Mthatha, New Village, and Hlahleya.
2.	HHOYI TRIBAL AUTHORITY	Eric's Ville and Goba.

3.	SIBOSHWI TRIBAL AUTHORITY	Part of kaMqhekeza, Block A (KwaZibukwane), Block B (KwaSibhejane), Block C (Esibayeni), Tonga and Los My Cherry.
4.	KWA-LUGEDLANE TRIBAL AUTHORITY	Mangweni and Steenbok
5.	MAWEWE TRIBAL AUTHORITY	Magudu, Mgobodzi, Madadeni, Sibange, Phakama.
6.	MATSAMO TRIBAL AUTHORITY	Jeppes Reef, Schoemansdal, Buffelspruit, Driekoppies, Middleplaas, Schulzendaal, Mzinti, Ntunda, Phiva, Mdladla, Phosaville, Langeloo, Ekuphumuleni, Sikhwahlane.
7.	MHLABA TRIBAL AUTHORITY	Magogeni, Boschfontein, Skoonplaas.
8.	LOMSHIYO TRIBAL AUTHORITY	Louieville; Shiyalongubo, Sincobile.

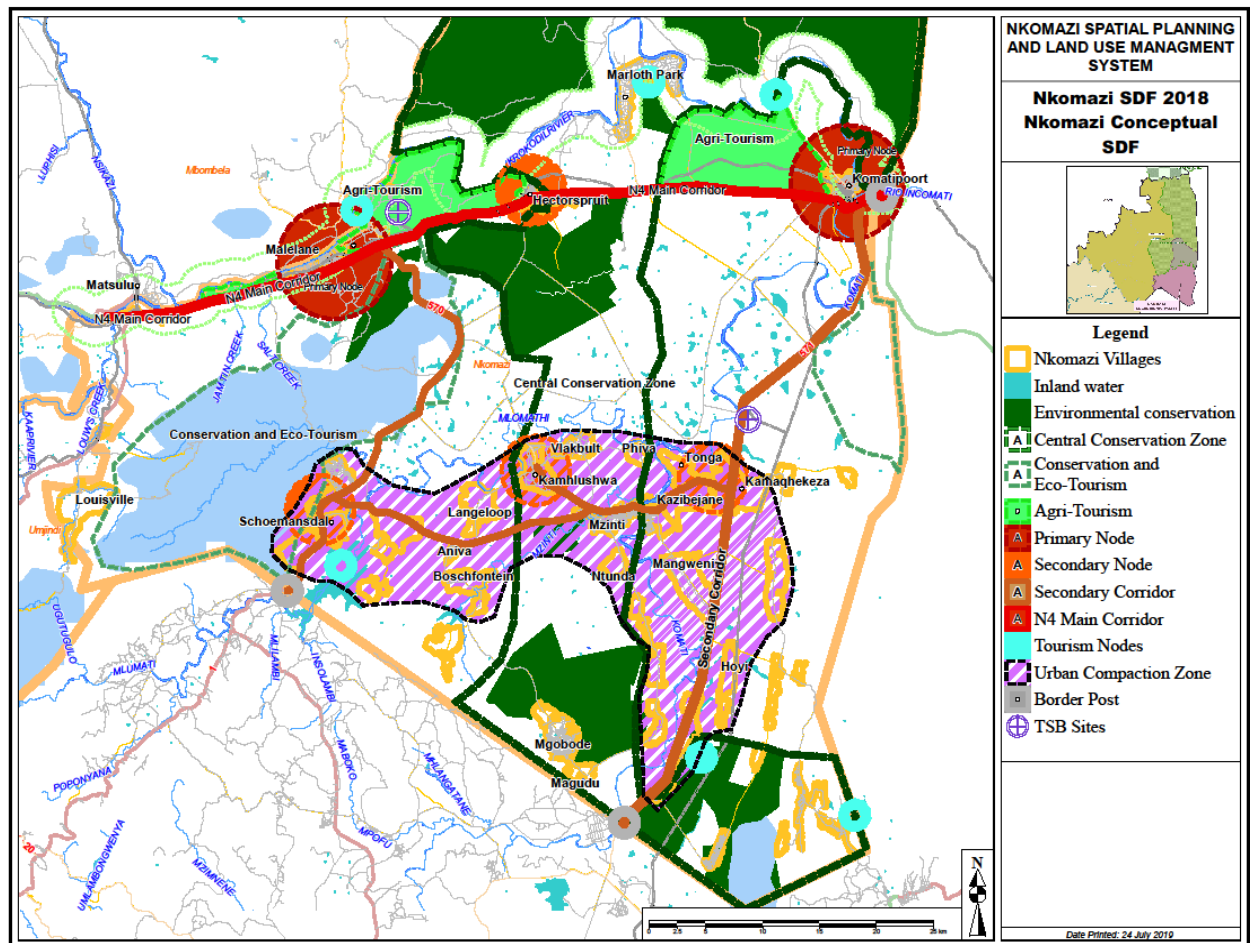


Figure 23: The map indicates the Nkomazi municipal area with its relevant nodes and corridors, as well as its settlements.

Source: Nkomazi SDF 2018

The above settlement structure was previously governed by three Town Planning Schemes focused around three urban nodes, which were not developed specifically for the context of areas outside of the relevant urban edges.

The three relevant Town Planning Schemes were:

- Komatipoort Town Planning Scheme 1992,
- Marloth Park Town Planning Scheme 2000, and

- Greater Malelane Town Planning Scheme, 1997.

The subject project was purposed to develop and implement a Spatial Planning and Land Use Management System, that included the development of the land use scheme, the review of and integration of the municipal SDF, the development of the related by-law and implementation of an electric system that would accommodate all to:

- Ensure the smooth implementation and operation of SPLUMA within the municipality,
- Set a standard for such systems within the municipal area,
- Further the municipal vision to empower the communities through excellent service delivery,
- Enhance the core values of the municipality, being accountability, good governance, transparency, integrity and responsiveness.

Due to different planning legislation used in Nkomazi Municipality, land use management was fragmented, creating development patterns that did not promote integration and sustainability of social, economic and environmental elements. This further created weak and uncoordinated institutional arrangements, promoting incoherent planning procedures and systems within the municipality. The foundation of this incoherent planning framework is discussed in Chapter 3. This could be said to be a general context for Category B municipalities in South Africa, with similar contexts.

The old Town Planning Schemes were outdated and were no longer relevant to the current developmental challenges and framework that faced the Municipality, hence the call to develop a new LUMS covering the entire administrative area of Nkomazi Municipality as it was in line with SPLUMA and the Constitution.

The development of the Nkomazi LUMS drew its legislative foundation from SPLUMA, which required a municipality to adopt and approve a single land use scheme for its entire area as per the Constitution (See Chapter 3).

The context of the Nkomazi Municipality included the following planning legislation that applied to the area within the wall-to-wall scheme boundary (also see Chapter 3):

- Greater Malelane Town Planning Scheme 1997;
- Komatipoort Town Planning Scheme 1992;
- Marloth Park Town Planning Scheme 2000
- Town Planning and Town Ordinance (No 15 of 1986);
- Development Facilitation Act, 1995 (only sections that have not been repealed);
- The Black Communities Development Act, (No 4 of 1984);
- Division of Land Ordinance, 1986 (Ord 20 of 1986); and the
- Removal of Restrictions Act, 1967 (Act 84 of 1967) before the DFA and Removal of Restrictions Act were repealed by SPLUMA. The mentioned Town Planning Schemes were repealed by the promulgation of the Nkomazi Land Use Scheme as its replacement.

Land use management was administered by the Mpumalanga Department of Agriculture, Rural Development and Land Administration in rural areas within the municipal area and the following legislation were applicable to these areas before the implementation of SPLUMA:

- The Sub-division of Agricultural Land Act (Act 70 of 1970);
- Roads and Ribbon Development Act, 1940 (Act 1 of 1940);
- Less Formal Township Establishment Act, 1991 (Act 113 of 1991) (repealed by SPLUMA);
- Physical Planning Act, 1967 (Act 88 of 1967) (repealed by SPLUMA); and
- The Upgrading of Land Tenure Rights Act, (Act 112 of 1991) (significantly amended by the Upgrading of Land Tenure Rights Amendment Act 6 of 2021 that was effective from 1st of June 2024).

Land use changes are also subject to approval from the relevant authority in terms of the National Environmental Management Act, 1998 (Act 107 of 1998).

4.5.2 SPLUMA requirements for the land use scheme

The Spatial Planning and Land Use Management Act 16 (SPLUMA) of 2013 was enforced on the 1st of July 2015. Sections 24 to 30 of the Spatial Planning and Land Use Management Act apply to any land use scheme in South Africa to be developed, prepared, adopted and amended and in context, specifically to the Municipality in the Nkomazi Spatial Planning and Land Use Management By-Law 2015. The by-law had to make provision for the land use management scheme as per the next section.

SPLUMA Chapter 5 indicates the requirements and descriptions of Land Use Management and specifically the land use scheme.

SPLUMA Section 25(1) and 25(2) indicate the purpose and content of the land use scheme. It stipulates that a land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates to promote—

- (a) economic growth;*
- (b) social inclusion;*
- (c) efficient land development; and*
- (d) minimal impact on public health, the environment and natural resources.*

SPLUMA Section 25(2) stipulates that: *A land use scheme must include—*

- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;*
- (b) a map indicating the zoning of the municipal area into land use zones; and*
- (c) a register of all amendments to such land use scheme.*

The purpose of the Land Use Scheme is stipulated in section 25(1) of SPLUMA. Municipality must determine the use and development of land within the municipal area to which it relates to promote -

- (a) *harmonious and compatible land use patterns;*
- (b) *aesthetic considerations;*
- (c) *sustainable development and densification; and*
- (d) *the accommodation of cultural customs and practices of traditional communities in land use management; and*
- (e) *a healthy environment that is not harmful to a person's health.*

SPLUMA Section 24 indicates the requirements for the land use scheme in the following:

Section 24 (1) *A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act.*

(2) *A land use scheme adopted in terms of subsection (1) must—*

- (a) *include appropriate categories of land use zoning and regulations for the entire municipal area, including areas not previously subject to a land use scheme;*
- (b) *take cognisance of any environmental management instrument adopted by the relevant environmental management authority, and must comply with environmental legislation;*
- (c) *include provisions that permit the incremental introduction of land use management and regulation in areas under traditional leadership, rural areas, informal settlements, slums and areas not previously subject to a land use scheme;*
- (d) *include provisions to promote the inclusion of affordable housing in residential land development;*

(e) include land use and development incentives to promote the effective implementation of the spatial development framework and other development policies;

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

(g) give effect to municipal spatial development frameworks and integrated development plans.

(3) A land use scheme may include provisions relating to—

(a) the use and development of land only with the written consent of the municipality;

(b) specific requirements regarding any special zones identified to address the development priorities of the municipality; and

(c) the variation of conditions of a land use scheme other than a variation which may materially alter or affect conditions relating to the use, size and scale of buildings and the intensity or density of land use.

(4) The local municipalities within a district municipality may by agreement request the district municipality to prepare a land use scheme applicable to the municipal areas of the constituent local municipalities within that district municipality.

The purpose of the and content of land use scheme is indicated in Section 25 of SPLUMA as follows: Section 25. *(1) A land use scheme must give effect to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates to promote—*

(a) economic growth;

(b) social inclusion;

(c) efficient land development; and

(d) minimal impact on public health, the environment and natural resources.

(2) A land use scheme must include—

- (a) scheme regulations setting out the procedures and conditions relating to the use and development of land in any zone;*
- (b) a map indicating the zoning of the municipal area into land use zones; and*
- (c) a register of all amendments to such land use scheme.*

The legal effect of land use scheme is shown in Section 26 of SPLUMA through the following: Section 26. *(1) An adopted and approved land use scheme—*

- (a) has the force of law, and all landowners and users of land, including a municipality, a state-owned enterprise and organs of state within the municipal areas are bound by the provisions of such a land use scheme;*
- (b) replaces all existing schemes within the municipal area to which the land use scheme applies; and*
- (c) provides for land use and development rights.*

(2) Land may be used only for the purposes permitted—

- (a) by a land use scheme; (b) by a town planning scheme, until such scheme is replaced by a land use scheme; or (c) in terms of subsection (3).*

(3) Where no town planning or land use scheme applies to a piece of land, before a land use scheme is approved in terms of this Act such land may be used only for the

purposes listed in Schedule 2 to this Act and for which such land was lawfully used or could lawfully have been used immediately before the commencement of this Act.

(4) A permitted land use may, despite any other law to the contrary, be changed with the approval of a Municipal Planning Tribunal in terms of this Act.

(5) A municipality may, after public consultation, amend its land use scheme if the amendment is—

- (a) in the public interest;*
- (b) to advance, or is in the interest of, a disadvantaged community; and*

(c) to further the vision and development goals of the municipality.

(6) A land use scheme developed and approved in terms of this Act must address and resolve any conflict with an existing scheme not repealed or replaced by the new land use scheme.

The Enforcement of land use scheme is indicated in Section 32 of SPLUMA as follows: Section 32. *(1) A municipality may pass by-laws aimed at enforcing its land use scheme.*

(2) A municipality may apply to a court for an order—

(a) interdicting any person from using land in contravention of its land use scheme;

(b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or

(c) directing any other appropriate preventative or remedial measure.

(3) A municipality—

(a) may designate a municipal official or appoint any other person as an inspector to investigate any non-compliance with its land use scheme; and

(b) must issue each inspector with a written designation or appointment in the prescribed form, stating that the person has been appointed in terms of this Act.

(4) When an inspector contemplated in subsection (3) performs any function of an inspector in terms of this Act, the inspector—

(a) must on request produce his or her written designation or appointment; and

(b) may not be a person having a direct or indirect personal or private interest in the matter to be investigated.

(5) An inspector contemplated in subsection (3) may, subject to subsection (8)—

- (a) enter any land at any reasonable time without previous notice for the purpose of ascertaining an issue required to ensure compliance with this Act;*
 - (b) question any person who is or was on or in such land, either alone or in the presence of any other person, on any matter to which this Act relates;*
 - (c) require from any person who has control over or custody of a book, record or other document on or in such land, to produce to the inspector forthwith, or at such time and place as may be determined by the inspector, such book, record or other document;*
 - (d) examine any such book, record or other document or make a copy thereof or an extract therefrom;*
 - (e) require from such a person an explanation of any entry in such book, record or other document;*
 - (f) inspect any article, substance, plant or machinery which is or was on the land, or any work performed on the land or any condition prevalent on the land, or remove for examination or analysis any article, substance, plant or machinery or a part or sample thereof;*
 - (g) seize any book, record or other document or any article, substance, plant or machinery or a part or sample thereof which in his or her opinion may serve as evidence at the trial of any person charged with an offence under this Act or the common law: Provided that the user of the article, substance, plant or machinery concerned, as the case may be, may make copies of such book, record or document before such seizure; and*
 - (h) direct any person to appear before him or her at such time and place as may be determined by the inspector and question such person either alone or in the presence of any other person on any matter to which this Act relates.*
- (6) When an investigator enters any land in terms of subsection (5), a person who controls or manages the land must at all times provide such facilities as are reasonably required by the inspector to enable him or her to perform his or her functions effectively and safely under this Act*

(7) When an inspector removes or seizes any article, substance, plant, machinery, book, record or other document as contemplated in subsection (4)(f) or (g), he or she must issue a receipt to the owner or person in control thereof and return it as soon as practicable after achieving the purpose for which it was removed or seized.

(8) An inspection of a private dwelling may only be carried out by an inspector when authorised in terms of a warrant issued by a competent court.

(9) An inspector may, where necessary, be accompanied by a police official or any other person reasonably required to assist him or her in conducting the inspection.

(10) An inspector may issue a compliance notice in the prescribed form to the person who controls or manages the land or the owner or person in control of a private dwelling if a provision of this Act has not been complied with.

(11) A compliance notice remains in force until the relevant provision of the Act has been complied with and the inspector has issued a compliance certificate in respect of that notice.

(12) An inspector who enters and searches any land or private dwelling under this section, must conduct such search or seizure with strict regard for decency and order, and with regard for each person's right to dignity, freedom, security and privacy.

4.5.3 Nkomazi Spatial Planning and Land Use Management By-Law 2015

The Nkomazi Spatial Planning and Land Use Management By-Law was promulgated on the 1st of December 2016 as part of the subject project that entails the implementation of the SPLUM system.

The by-law prescribes the procedures and processes related to land use and spatial planning for the municipal area as per SPLUMA requirements. This entailed the content of the Land Use Scheme as well as the process that should be followed and the related management structures.

Section 16 of the Nkomazi SPLUM by-law indicates the additional purposes to those set out in Section 25 (1) if the SPLUMA (see previous section).

In addition to the purposes of a land use scheme stipulated in section 25(1) of the Act, the Municipality must determine the use and development of land within the municipal area to which it relates to promote -

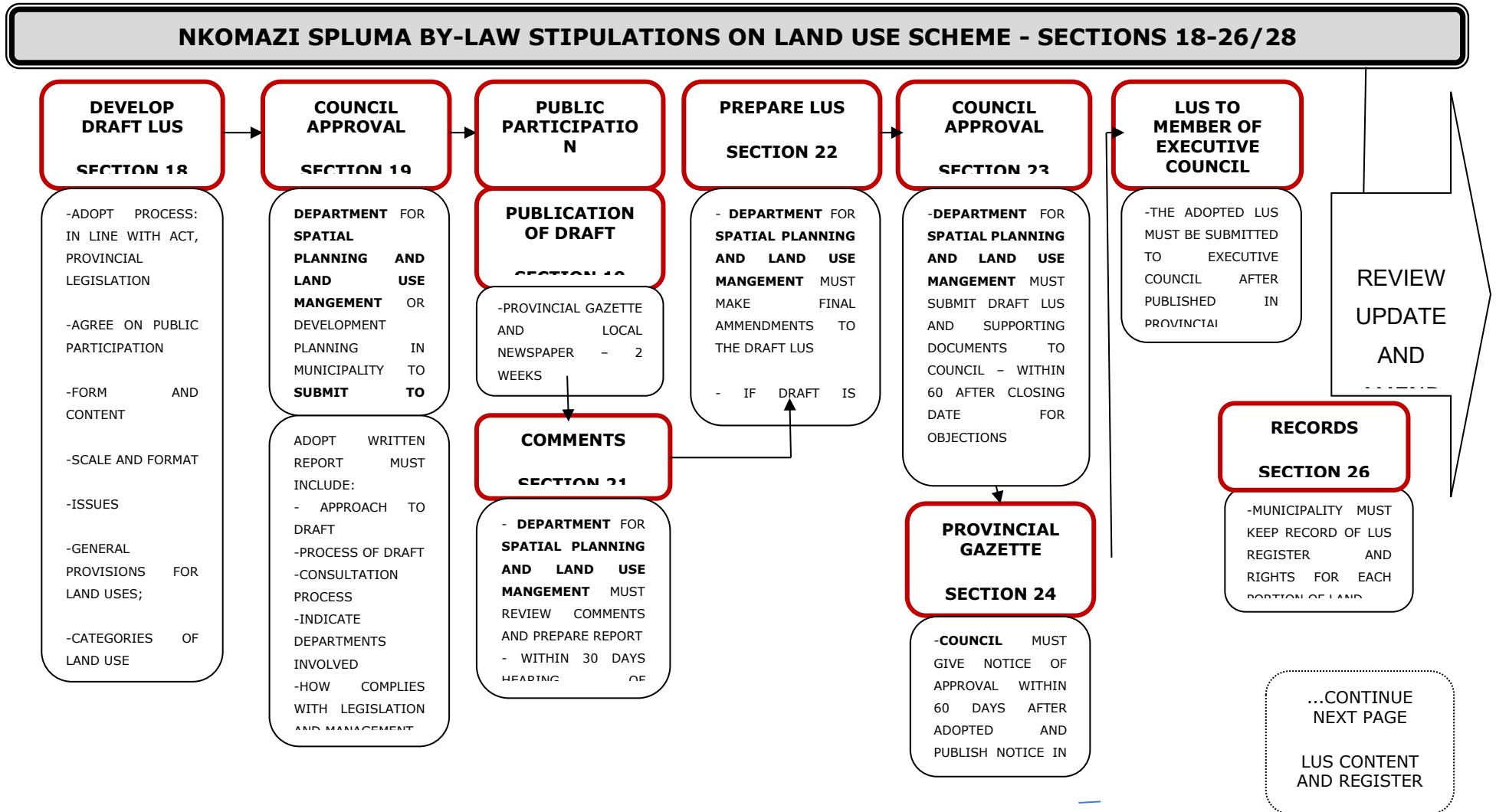
- (a) harmonious and compatible land use patterns;
- (b) aesthetic considerations;
- (c) sustainable development and densification; and
- (d) the accommodation of cultural customs and practices of traditional communities in land use management; and
- (e) a healthy environment that is not harmful to a person's health.

The diagram in the next two pages indicate the procedures that were followed to prepare, develop and establish a Land Use Management Scheme for Nkomazi Local Municipality. It also describes the content and components of content for the land use register that was needed for the Scheme.

The practical implementation of the spatial planning and land use management system relates to the physical implementation of the planning system over a four-year period from 2015 until 2019. The implementation project was in relation to many similar projects that were initiated just before the implementation of SPLUMA on the 1st of July 2015. Various tenders were advertised for service providers to attend to the planning systems in municipalities to become SPLUMA compliant. This specific project was vested in the province of Mpumalanga at a Category B municipality that included several urban areas, several traditional authorities, border control stations, a development corridor, a nationally recognised nature reserve with wildlife, a tourism hub, agricultural land and more. The project entailed the development of a Spatial Planning and Land Use Management by-law (SPLUM by-law), the development of a wall-to-wall land use scheme, the review of the municipal SDF, the facilitation and establishment of the Municipal Planning Tribunal

(MPT) and the equipment of an electronic system to accommodate the planning system. This chapter will discuss the development of the by-law, the wall-to-wall land use scheme and the review of the SDF. Through this process, key issues became visible as was discussed in Chapter 3. The diagram in the next two pages indicates the procedures that were followed to prepare, develop and establish a Land Use Management Scheme for the Nkomazi Local Municipality. It also describes the content and components of content for the land use register that was needed for the Scheme.

Figure 24: Processes to prepare the Land Use Scheme for the Category B municipality



NKOMAZI SPLUMA BY-LAW STIPULATIONS ON LAND USE SCHEME

NKOMAZI LAND USE SCHEME 2015

LUS CONTENT

SECTION 27

-CONTENT = CHAPTER 5 SPLUMA

-CONTENT:

- ZONING ON ALL PROPERTIES IN MUNICIPAL AREA
- LAND USE REGULATIONS (CONDITIONS, LIMITATIONS, PROVISIONS)
- PROVISION FOR PUBLIC PARTICIPATION IF REQUIRED
- PROVISIONS RELATED TO ENGINEERING SERVICES
- SERVITUDES FOR MUNICIPAL SERVICES AND ACCESS ARRANGEMENTS
- PROVISION FOR STORM WATER
- PROVISION FOR CONSTRUCTION AND MAINTENANCE OF ENGINEERING SERVICES

LUS REGISTER

SECTION 28

-CONTENT = CHAPTER 5 SPLUMA

-CONTENT:

- DATE OF APPLICATION
- NAME AND CONTACT DETAILS OF APPLICANT
- TYPE OF APPLICANT
- TOWNSHIP/FARM NAME
- ERF OR FARM NUMBER
- PORTION/REMAINDER
- PROPERTY DESCRIPTION
- EXISTING ZONING
- SQUARE METERS GRANTED
- DENSITY
- FAR
- HEIGHT (STOREYS/METERS)
- COVERAGE
- BUILDING LINE
- PARKING REQUIREMENTS
- AMENDMENT SCHEME NUMBER

CHAPTERS 5,6 & 7

SECTION 54-124

**RELATES TO
DEVELOPMENT
APPLICATION
PROCEDURES**

The Nkomazi SPLUM by-law 2015 required the content of the proposed Land Use Scheme in Section 27 of the By-Law and the Land Use Scheme Register in Section 28 of the By-Law. Sections 27 and 28 of the By-law are listed below.

Section 27 of the by-law: Contents of land use scheme

(1) The contents of a land use scheme developed and prepared by the Municipality must include all the essential elements contemplated in Chapter 5 of the Act (SPLUMA) and provincial legislation and must contain –

- (a) a zoning for all properties within the geographic area of the Municipality;*
- (b) land use regulations including specific conditions, limitations, provisions or prohibitions relating to the exercising of any land use rights or zoning approved on a property in terms of the approved land use scheme or any amendment scheme, consent, permission or conditions of approval of a land development application on a property;*
- (c) provisions for public participation that may be required for purposes of any consent, permission or relaxation in terms of an approved land use scheme;*
- (d) provisions relating to the provision of engineering services, which provisions must specifically state that land use rights may only be exercised if engineering services can be provided to the property to the satisfaction of the Municipality;*
- (e) servitudes for municipal services and access arrangements for all properties;*
- (f) provisions applicable to all properties relating to storm water;*
- (g) provisions for the construction and maintenance of engineering services including but not limited to bodies established through the approval of land development applications to undertake such construction and maintenance;*

- (h) *zoning maps that depict the zoning of every property in Municipality's geographical area as updated from time to time in line with the land use rights approved or granted; and*
 - (i) *transitional arrangements with regard to the manner in which the land use scheme is to be implemented.*
- (2) *The land use scheme may –*
 - (a) *determine the components of the land use scheme for purposes of it being applied, interpreted and implemented; and*
 - (b) *include any matter which it deems necessary for municipal planning in terms of the constitutional powers, functions and duties of a municipality.*

This section is in partial fulfilment of Sections 24,25, 26, 31 and 32 of SPLUMA.

Section 28 of the by-law is related to the Land Use Scheme register and is addressed as follows:

The Municipality must keep and maintain a land use scheme register in a hard copy or electronic format as approved by the Council and may contain the following but is not limited to:

- (a) *Date of application*
- (b) *Name and contact details of applicant*
- (c) *Type of Application*
- (d) *Township/Farm name*
- (e) *Erf or farm number*
- (f) *Portion / Remainder*
- (g) *Property Description*
- (h) *Existing Zoning*
- (i) *Square Metres Granted*
- (j) *Density*

- (k) *FAR*
- (l) *Height (storeys/meters)*
- (m) *Coverage*
- (n) *Building Line*
- (o) *Parking Requirements*
- (p) *Amendment scheme no*
- (q) *Annexure Number*
- (r) *Item No*
- (s) *Item Date*
- (t) *Decision (Approved/Not Approved)*
- (u) *Decision Date.*

This is in fulfilment of SPLUMA Section 31 and Section 25 (2).

4.5.4 Development of the land use scheme and the inclusion of all areas within the municipality

The project that entailed the establishment of the wall-to-wall land use scheme required the following:

- A comprehensive wall-to-wall land use scheme in terms of SPLUMA
- Provision of procedural guidelines for lodging applications, objections and appeals
- Provision of assessment guidelines as a template to ensure compliance with legislation in the application procedures
- Including the required by-law and policies
- Included an electronic register of land use rights.

The land use scheme of the Category B municipality was promulgated in 2018. The development of the land use scheme was comprehensive in that it included the participation of the entire municipal area and the inclusion of the entire municipal area, the urban areas, the agricultural areas, the proposed Special Economic Zone, the

Lebombo border, other borders to Eswatini, the Kruger National Park, eight Traditional Authorities and areas, sugar factory, other nature reserves and more. The information of the status quo, as well as the consultation of current use and the determination of need took significant research. It involved the integration of the current schemes, and the growth of current use, the administration of the previous schemes as well as the administration of the land use and land use rights from the provincial government, together under the framework of SPLUMA to develop the wall-to-wall scheme. Special attention was given to the Traditional Authorities, as this was unchartered territory, with little to no guidance of how to include or in what way. The only indication was to include in decision making and that the traditional authorities should be consulted. This may be fair enough, as it can be said to be difficult to master a generalisation that would fit any traditional authority, as all the eight traditional authorities within the Nkomazi municipal area proved to be different in terms of their traditions, stances and future visions. A further complication was that of acknowledging traditional authority as being valid and not self-initiated. The provincial government challenged that there were eight traditional authorities in the area, and indicated that there are only seven, because the eight traditional authority was not registered.

The Traditional Authorities were deemed as registered if they had been advertised in the Government Gazette. These advertisements would typically determine or define their areas in terms of paragraph (a) of sub-section (1) of section 5 of the Native Administration Act 38 of 1927 as amended and then the Tribal/Traditional Authority itself would be established in terms of section 2 of the Bantu Authorities Act 68 of 1951 (also known as the Black Authorities Act). Below are examples of five of the eight advertisements found for the Traditional Authorities within the municipal area.

Table 18: Example of Traditional Authorities in consideration of being registered and valid

Establishment of Traditional Authorities deemed as registered Traditional Authorities			
Traditional Authority as indicated on the advertisement in the GG	Legislation establishing area	Legislation establishing Traditional Authority (Tribal Authority)	Date published
Lugedlane Tribe	Section 5(a)(1) Native Administration Act 38 of 1927	Section 2 Bantu Authorities Act 68 of 1951 (also known as Black Authorities Act)	1 March 1957
Hoyi Tribe	Section 5(a)(1) Native Administration Act 38 of 1927	Section 2 Bantu Authorities Act 68 of 1951 (also known as Black Authorities Act)	1 March 1957
Siboshwa Tribe	Section 5(a)(1) Native Administration Act 38 of 1927	Section 2 Bantu Authorities Act 68 of 1951 (also known as Black Authorities Act)	1 March 1957
Mahlalela Tribe	Section 5(a)(1) Native Administration Act 38 of 1927	Section 2 Bantu Authorities Act 68 of 1951 (also known as Black Authorities Act)	3 August 1955

Mhlaba Tribe	Section 5(a)(1) Native Administration Act 38 of 1927	Section 2 Bantu Authorities Act 68 of 1951 (also known as Black Authorities Act)	29 November 1957

Source: Own construction from legal documents

The development of the wall-to-wall land use scheme required significant research in establishing the status of land use and land use rights to integrate and develop the scheme under one framework.

4.5.4.1 The information that was needed for the development of the LUS

The development of the wall-to-wall land use scheme required a vast amount of information to consider and compile a draft document, together with consultations with stakeholders and affected persons and communities. Some of the information that was needed included aerial photographs, cadastral maps, current consent use approvals and associated documents, all existing planning policies for the context of the municipality, land audits, land use survey data, and any other approvals that include DFA, Act 113 and 112, as well as any permits or permission to occupy, precinct plans, schemes that were in operation (including their clauses, registers and scheme maps, the SDF document, SDF maps, townships conditions of establishment; valuation roll, zoning database, and related building control. Most times obtaining information were not straight forward. There were times when information was not available. As an example, the change to the SPLUMA spatial planning and land use management system, by the implementation of SPLUMA in 2015 and the subsequent projects, enabled the development of wall-to-wall land use schemes for all municipalities in its Constitutional form as discussed in Chapter 3. The change of administration from the provincial government to the local government or municipality entailed the transfer of the land use register and its supporting documentation from the provincial government to the municipality. The provincial government has gone through several restructuring processes before and the result was that an electronic register had to be developed for the land use rights and applications submitted to it, for it to be transferred to the land use planning authority, viz. the

municipality (as discussed in Chapter 3). This process would typically entail screening each page of all pages of the available documentation for a specific municipality. This would require a numbered stamp on each page of the document to indicate how many pages there are in each document and application. The documents would include application forms, correspondence letters, letters of approval with conditions of the permit or township establishment, maps, submissions for all planning applications outside the urban area up until 2015, as well as surveyor general maps and diagrams, title deeds and more. The stamped documents then would have to be scanned to create an electronic reference to the application and property. This would be recorded in an excel spreadsheet to create the physical register of documents, applications and approvals per property. The hard copies, together with the created electronic record would then have to be signed off by the relevant responsible official and then signed off by the archives of the related provincial government. The documents and register would then officially be transferred to the related municipality, which are the authority for all land use applications and record-keeping of these applications and land use activities as per SPLUMA. These records were then integrated into the records that the municipality already had.

Together with this, the physical records of the building control department were scanned and allocated to each property. Building control forms part of the LUS control measures and should also be considered. The mentioned information related to the land use register, was one of many aspects of information needed.

The tracking of needed information also included the revisitation of the existing municipal records, scheme maps, approved applications, future visions within the IDP, personal interviews and meetings with traditional authority groups, community groups and affected and interested parties that requested input and addressing concerns and wishes for example the Kruger National Park's representative and the Marloth Park Property Owners Association (MPPOA), determination of status of the Lion spruit reserve and more. The search for information was directed through certain objectives.

4.5.4.2 Objectives of the development of the wall-to-wall land use scheme

The objective of the development of the wall-to-wall land use scheme was to develop a comprehensive Land Use Scheme (LUS) that would enable orderly and harmonious development within the municipal area. The developed LUS should also include the entire municipal area (see Section 3.7.2 for background). The LUS would further give effect to and be consistent with the municipal SDF and determine the use and development of land within the municipal area to promote social inclusion, economic growth, efficient development and minimise the impact on natural resources and public health. It should be able to address inconsistencies and bridge gaps that had been created by various planning tools when considering planning applications or development proposals. The LUS should balance policy objectives, decision-making and the implementation thereof. The developed LUS should replace and repeal any outdated schemes that were used within the municipal area. The development of the scheme should have certain characteristics as it is required through SPLUMA.

4.5.4.3 Characteristics of the Land Use Scheme

The developed scheme should represent and be aligned with the principles of SPLUMA. It should be simple and flexible. It should make provision for special developmental zones that are linked to economic growth, environmental management, resources sustainability and other related special cases that may arise. The developed wall-to-wall land use scheme should satisfy the following: Accommodate current and future desirable land use patterns; resolve conflict among different land uses, promote economic, social and environmental land use sustainability; protect amenities of adjacent land uses; promote and protect areas and buildings with heritage significance and protect cultural resources and promote cultural diversity. The development of the scheme was determined by a certain scope.

4.5.4.4 Scope of the development of the Land Use Scheme

The scope of work required for the development of the wall-to-wall land use scheme included the following:

- Assessment of applicable land use management tools and relevant legislation, policy documents and regulations that have impact on land use schemes
- Identification of all existing land use rights allocated in terms of different forms of legislation
- Identification of all non-proclaimed land use approvals; review of all land uses within the municipal area, compilation of a land use scheme that includes the entire municipal area and will also reflect land use zones agreed upon through a process of public participation
- Provision of a scheme document that contains management tools and statutory requirements for the related areas or zones
- Determination of mechanisms to address developments taking place in informal townships within the municipality
- Drafting of policies to address the requirements of the scheme
- Provision of an electronic register of land use rights
- integration of the scheme into the electronic system and proclamation of the scheme in terms of SPLUMA.

The scope of work for the development of the scheme was set to accomplish the required outcome.

4.5.4.5 Outcomes of the development of the Land Use Scheme

The final land use scheme included the following:

In general, it would include a brief title, the area of the land use scheme, status, commencement and validity, powers of the council, purposes of the scheme, components of the land use scheme, and transitional arrangements. It also included user orientation, definitions, land use categories, land use zones, land use and zones matrix, management zones, development criteria, scheme maps, special mechanisms for special development zones, development regulations, general regulations and policies, planning administration, application procedures, application content and format. Furthermore, it would include the scheme map, which would include an index map and map sheets that would include all properties and land use rights in the municipal area. Similarly, the land

use register that would serve as the land use record, together with the electronic system that would accommodate it, was included. The land use scheme as a component of the larger project, required certain deliverables.

4.5.4.6 The project deliverables for the development of the Land Use Scheme or outputs

The deliverables of the development of the land use scheme included a research document that reflects the current land use management tools and legislation, policy documents and regulations that have an impact on the scheme: base documents, scheme clauses, scheme maps, scheme matrix, scheme zones, tables and templates, electronic register of land use rights, GIS shape files and attributes, workshop and participation. The methodology followed to obtain the deliverables are indicated below.

4.5.4.7 Methodology for and approach to the development of the land use scheme

Land use management could be interpreted in different ways, which were considered in this project. The definition of the land use management system as defined in SPLUMA (SPLUMA, 2013:12) is defined as “...the system of regulating and managing land use and conferring land use rights through the use of schemes and land development procedures”. The Planning Professions Act indicates that a planner “...means a person who exercises skills and competencies in initiating and managing change in the built and natural environment in order to further human development and environmental sustainability...”. The White Paper on Spatial Planning and Land Use Management points out that there are two key elements of municipal spatial planning that are traditionally known as “forward planning” and “land use control”. The Local Economic Development (LED) policy paper of 2001 breaks down the planning process into components. Municipalities have the responsibility to ensure that five competencies within each system are functional. They include infrastructure, programmes, procedures, management routines and management interventions. The municipal Integrated Development Plan (IDP) environment is performance management that measures the impacts of development.

The three components, viz. forward planning, land use control and performance management, form the municipal land use management system. Forward planning as a function of the municipality is represented in the Spatial Development Framework (SDF). The Municipal SDF reflects the vision and development objectives of the local municipality. It serves as a flexible guide or rudder that directs municipal decision-making and includes the allocation of projects for the IDP. The land use control function is represented in the Land Use Scheme. It serves as a regulatory and planning tool for the municipality. The LUS regulation includes the locality of development, the prescribed procedures that must be followed and the nature of the development. Performance management is required to assess the impact of development on the vision and development goals of the municipality. This includes formalised townships, the number of roads that was upgraded, establishment of or progress of development nodes, measurement of water provided, the effectiveness of planning and capacity to implement projects. Integrated Municipal Planning consists of the three mentioned components, which are interrelated with each other and function together for the establishment of developmental local governance. (See Section 5.2.1 for the required content of the LUS in terms of SPLUMA.)

Methodology

The development of the Land Use Scheme for the Category B municipality consisted of components that included the research for the LUS, participation, scheme clauses, cadastral map, land use survey, scheme map, property Masterfile, land use rights, GIS and implementation.

Research for the development of the LUS means the gathering and analysis of all the existing related information, datasets, systems and documents. This includes the analysis of the existing or previous land use management system, all existing datasets, policies related to development as well as the SDFs, existing land use rights, the existing scheme(s) and scheme maps, the record of amendments to the scheme, all annexures and consent uses, interested parties and stakeholders, strengths of the municipality and any possible challenges. This was represented in research, analysis and a recommendations report that guides the implementation of the project. It dealt with the

analysis of the status quo, indicated possible gaps that exist in the system and provided recommendations with which to address the gaps.

Participation

Public participation formed a crucial part of the development of the LUS. Stakeholders and the public were included in the participation strategy in cooperation with the municipality. SPLUMA Section 24(1) indicates that: “A municipality must, after public consultation, adopt and approve a single land use scheme for its entire area within five years from the commencement of this Act.” (See Chapter 3 for the implications that are captured in the municipal boundaries that relate to the word “entire area” here.) SPLUMA Section 32 (1) further determines, within the enforcement of LUS, that the municipality can pass by-laws to enforce the LUS. This project included the development of the subsequent LUS and includes public participation measures. SPLUMA Section 23 (2) requires the participation of any related traditional council in the establishment and decision-making in the development and the amendments to a land use scheme, as being subject to Section 81 of the Local Government: Municipal Structures Act 117 of 1998 and the Traditional Leadership and Governance Framework Act 41 of 2003.

The category B municipality has seven registered Traditional Authorities and one that is not registered. Registration of a Traditional Authority refers to tribal authorities registered and advertised in the Government Gazette in terms of the Black Authorities Act 68 of 1951. A range of meetings were arranged with the Traditional Authorities within the municipal area, each on their own, to discuss the land use scheme as well as the SDF with them and obtain their understanding and input.

The intent to develop and adopt a wall-to-wall Land Use Scheme was published in the Government Gazette and the local newspapers together with the declaration of intent to review the related SDF. This was done in terms of Sections 20(3) and 28(2) of SPLUMA and the related sections in the SPLUM by-law that was published in 2015.

The classification of land uses and land use management entailed a significant amount of research on best practices and full understanding of definitions involved.

4.5.4.8 Land use classification and land use management

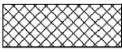
The Land Use Scheme, as described in the introduction, could be divided into three larger parts:

- **Scheme Clauses** – The document with classifications, definitions, regulations, building restrictions etc.
- **Scheme Map** – Geographical interpretation or map of the current land uses, the spatial element of the Land Use Scheme.
- **Land Use Register** – The subject properties, all the properties within the municipal area, with assigned classification, definition etc. This includes the list of content required as set out in the Nkomazi SPLUM By-Law 2015.

An example of a definition, a matrix board and a land use scheme map follows below.

- Definition:
Dwelling House: Means a freestanding dwelling unit used as a dwelling for a single family, together with such outbuildings as is ordinarily used therewith.
- Zoning Matrix

Table 19: Example of zoning matrix

ZONE NUMBER	(1) USE ZONE	(2) NOTATION	(3) PRIMARY LAND USE RIGHTS	(4) SECONDARY LAND USE RIGHTS	(5) PROHIBITED LAND USES
6	BUSINESS 1		Business purposes, shops, residential buildings, place of instruction, social halls, restaurant, car sales lot, motor showrooms, offices, public or private parking area, institutions, religious purposes, dwelling units	Uses not in columns (3) and (5)	Noxious industries, scrap yards, panel beaters, spray painting
7	BUSINESS 2		Shops, dwelling units, residential buildings, places of instruction, business purposes, car sales lots, institutions	Uses not in columns (3) and (5)	Noxious industries, scrap yards, panel beaters, spray painting
8	BUSINESS 3		Shops, offices, restaurants	Uses not in columns (3) and (5)	Noxious industries, scrap yards, panel beaters, spray painting
9	BUSINESS 4		Offices	Place of instruction, place of amusement, dwelling units, religious purposes, shops, restaurants, car sales lot, motor showrooms, special building, public or private parking area, residential buildings.	Uses not in columns (3) and (4)
10	SPECIAL		Only uses as stipulated in the applicable Schedule	Only uses as stipulated in the applicable Schedule	Uses not in Columns (3) and (4)
11	INDUSTRIAL 1		Industrial purposes, public garages, public or private parking areas, shops, business purposes, commercial purposes, builders yard	Uses not in columns (3) and (5)	Noxious industries

- Scheme Map



Figure 25: Example of scheme map

In order to develop the Scheme Clauses, the Classification of the different land uses were developed. The classification also involves the definitions of the land uses. The primary and secondary or tertiary uses of a land use will be subject to the structure chosen for the classification system.

The previous land use categories of classification of the properties within the municipal area, which was subject to three different land use schemes and the dataset of properties outside the urban area, were integrated with the SPLUMA and the Nkomazi SPLUM By-Law 2015. The land use classification and management and reviewing examples of other municipal land use management schemes, as well as international examples, assisted in the classification and addressing certain issues of the previous land use data set within the current legal framework.

4.5.4.9 Land use classification in the municipal area

There were three land use schemes in operation within the Nkomazi Local Municipal Area for consideration that were used to obtain land use rights within the municipal area. The three schemes were:

- Greater Malelane Town Planning Scheme, 1997;
- Komatipoort Town Planning Scheme, 1992;
- Marloth Park Town Planning Scheme, 2000.

The three schemes had their own classification of land uses with definitions, which were aligned and integrated with the Nkomazi By-Law 2015 definitions, which considered identified issues and special areas within the municipal area. The Kruger National Park also had their own manner of classification and definitions that were considered. Issues that were addressed through suggestions obtained from practice in other municipalities, research, areas or policy in a collaborative process, identifying the best solution. Key areas, as an example, were the addressing of traditional areas within the Nkomazi Municipal area, as well as the proposed Special Economic Zone.

Table 20: The systematic integration of the previous town planning schemes into the wall-to-wall land use scheme, through classification

SPLUMA Schedule2 Section 1 (p.68)	GREATER MALELANE TOWN PLANNING SCHEME 1997	MARLOTH PARK TOWN PLANNING SCHEME 2000	KOMATIPOORT TOWN PLANNING SCHEME 1992
+Agricultural purposes	Agricultural	Agricultural	
Business purposes	Business 1	Business 1	Business 1
	Business 2	Business 2	Business 2
	Business 3		Business 3
			Business 4
Commercial purposes			Commercial
Community purposes			
Conservation purposes			

Educational purposes	Educational/Religious		Educational
Government purposes	Existing Public Roads	Existing Public Roads	Existing Public Roads
		Municipal	
	Government	Government	
	Proposed New Roads and Widenings		Proposed New Roads and Widenings
Industrial purposes	Industrial 1		Industrial 1
	Industrial 2		Industrial 2
			Industrial 3
Institutional purposes	Municipal		Institutional
Mining purposes			

Public purposes	Public Open Space	Public Open Space	
	Tourism	Public Garage	
	Public Garage		
Recreation purposes	Amusement	Amusement	
Residential purposes	Residential 1	Residential 1	Residential 1
	Residential 2	Residential 2	Residential 2
	Residential 3		Residential 3
	Special		Residential 4
			Residential 5
Transport purposes	Transnet		
Any other purpose	Private Open Space	Special	Special

	Parking	Private Open Space	
	Aerodrome		
	Cemetery		
	Sewerage Farm		

Source: own construction

The systematic integration of the classification of land uses with the required uses in SPLUMA started in determining the use and definition of the status quo.

4.5.4.10 Classification

The Classification of the main components of the framework formed a central part of the structuring of the land use scheme. The land uses were identified and their definitions developed in categorised land use classes. The land use classes were integrated with the existing classifications of the three land use schemes, as well as classification for the SDF, environmental management, property valuations, and topography.

The municipal area in terms of authority extended over all area within the municipal borders and not just within the urban edge. The classifications provided for special areas such as traditional land uses, cultural land uses, agricultural areas, the border control areas and the then considered special economic zone.

SPLUMA lists fifteen major land uses with definitions for each one. The main land use classes and definitions in SPLUMA provides for a classification hierarchy of fifteen main classes and sixty-four sub-classes.

The Nkomazi Municipal Area holds eight traditional authoritative areas. KwaZulu-Natal and the North-West Province have developed land use classifications for traditional

areas. The review of their classification for traditional functions, land use and classification provided constructive suggestions on the development of classification for the existing traditional areas in the Nkomazi Municipal area.

INSPIRE (Infrastructure for Spatial Information in Europe), governed by the European Union, offered (in general and not specific to this project) a classification system known as the Hierarchical INSPIRE Land Use Classification System (HILCUS) and Plan4All and other projects which address classification for current and future land uses.

The purpose of INSPIRE was to create spatial infrastructure for the European Union. There are 28 member states of the European Union, and they had to overcome and manage many challenges to create a functional system, which is still in process. It came into being in 2007 and it was operational in 2019. Their categorisation provided and included current land uses and future land uses, which could benefit the connection between the land use scheme and the spatial development framework in South Africa, specifically then for Nkomazi Local Municipality. The categorisation of land use activities as well as the definitions could serve as constructive comparison with the current set of definitions and classifications for the land use scheme – with the purpose of establishing the same definitions to be used for the land use scheme and the spatial development framework, although certainly within contextualisation.

The HILCUS (Hierarchical INSPIRE Land Use Classification System) provided recommendations for circumstances where the specific land use would be provided and the classification system should be compared against various classification systems (national, and other sets (the three current land use schemes in Nkomazi LM)). INSPIRE's HILCUS project was general enough and was hierarchical to allow relational generalisation and flexibility. They applied the following principles to accomplish this:

- Completeness: The classification relates to the whole related land area. Areas without any use should also be included.
- Absence of overlap: Classification should enable a description for each portion of land.

- Dominance: This entails the identification of the dominant use of land, used for multi-purposes.
- Independency of scale and data collection tools: this relates to different sources informing data.
- Strict logic: The classification should have a sound foundation.
- Time independency: The classification should enable the definition of the current land use as well as the future or planned land use.

The review of examples related to land use classification, definitions and maps assisted the development of the proposed land use scheme.

The land use scheme classification, definitions, map and register had to be in-line with SPLUMA and therefore SPLUMA was used as the core foundation of the analysis and structure forming of the framework for the land use scheme.

In Schedule 2 of the SPLUMA (section 1, p.68) a list of land use purposes was provided. The list serves as a meta-category or primary land use for the classification of land uses (see block below.)

List of scheduled purposes:

- (a) Agricultural purposes;
- (b) business purposes;
- (c) commercial purposes;
- (d) community purposes;
- (e) conservation purposes;
- (f) educational purposes;
- (g) government purposes;
- (h) industrial purposes;
- (i) institutional purposes;
- (j) mining purposes;
- (k) public purposes;
- (l) recreational purposes;
- (m) residential purposes;
- (n) transport purposes; and

(o) any other purpose as may be prescribed (SPLUMA, Schedule 2, section 1, p.68)

Each of the land use purposes mentioned in SPLUMA, as indicated above, has definitions in Schedule 2, Section 2 of SPLUMA. They are listed below.

2. In this Schedule—

"agricultural purposes" means purposes normally or otherwise reasonably associated with the use of land for agricultural activities, including the use of land for structures, buildings and dwelling units reasonably necessary for or related to the use of the land for agricultural activities;

"business purposes" means purposes normally or otherwise reasonably associated with the use of land for business activities, including shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrap yards and industrial activities;

"commercial purposes" means purposes normally or otherwise reasonably associated with the use of land for distribution centres, wholesale trade, storage warehouses, carriage and transport services, laboratories or computer centres, including offices and other facilities that are subordinate and complementary to such use;

"community purposes" means purposes normally or otherwise reasonably associated with the use of land for cultural activities, social meetings, gatherings, non-residential clubs, gymnasiums, sport clubs or recreational or other activities where the primary aim is not profit-seeking, excluding a place of amusement;

"conservation purposes" means purposes normally or otherwise reasonably associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical, ecological, cultural or historical characteristics of land against undesirable change or human activity;

"educational purposes" means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including crèches, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities;

"government purposes" means purposes normally or otherwise reasonably associated with the use of land by the

national government, a provincial government or a municipality to give effect to its governance role;

"industrial purposes" means purposes normally or otherwise reasonably associated with the use of land for the manufacture, altering, repairing, assembling or processing of a product, or the dismantling or breaking up of a product, or the processing of raw materials, including a noxious activity;

"institutional purposes" means purposes normally or otherwise reasonably associated with the use of land for charitable institutions, hospitals, nursing homes, old-age homes, clinics and sanatoriums, either public or private;

"mining purposes" means purposes normally or otherwise reasonably associated with the use of land for mining;

"public purposes" means purposes normally or otherwise reasonably associated with the use of land as open spaces, public parks, public gardens, recreation sites, sport fields or public squares or for religious gatherings;

"recreation purposes" means purposes normally or otherwise reasonably associated with the use of land primarily for recreation, including entertainment, leisure, sports and amusement facilities;

"residential purposes" means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels and rooms to let; and

"transport purposes" means purposes normally or otherwise reasonably associated with the use of land primarily as a point for the pick-up or off-load of people or goods, including taxi ranks, bus bays, bus stations, bus terminuses, railway stations and ancillary uses, including roads and streets.

The list of purposes, as indicated above, formed the broader division of land use categorisation in the land use scheme and the primary use. A more detailed description, classification and division were needed. The previous divisions and classifications in the three previous operational town planning schemes in the municipal area were integrated and were accommodated in the development of the classification system.

The more refined classification of the primary land uses is indicated in the excerpt below as example.

Agricultural purposes: Agricultural activities; Agricultural structures; Agricultural buildings; Dwelling units

Business purposes: Shops; Offices; Showrooms; Restaurants

Commercial purposes: Distribution centres; Wholesale trade; Storage; Warehouses; Carriage and transport services; Laboratories; Computer centres

Community purposes: Cultural activities; Places for social meetings and gatherings; Non-residential clubs; Gymnasiums; Sport clubs; Recreational activities

A two-tiered classification consists of a Main Land Use (Primary), a larger grouping of land use category and a Secondary Use, which is generally associated with the primary or main land use category or classification. SPLUMA provides the list of primary land uses below with the corresponding secondary land uses, as derived from the definitions for the primary land uses in SPLUMA (see table below).

Table 21: Example of a two-tiered classification system (SPLUMA land use purposes and secondary uses):

Main use	Secondary uses
Agricultural purposes:	Agricultural activities
	Agricultural structures
	Agricultural buildings
	Dwelling units

Business purposes:	Shops
	Offices
	Showrooms
	Restaurants
Commercial purposes:	Distribution centres
	Wholesale trade
	Storage
	Warehouses
	Carriage and transport services
	Laboratories
	Computer centres
Community purposes:	Cultural activities
	Places for social meetings and gatherings
	Non-residential clubs
	Gymnasiums
	Sport clubs
	Recreational activities
Conservation purposes:	Associated with the use of land for the preservation or protection of the natural or built environment, including the preservation or protection of the physical,

	ecological, cultural or historical characteristics of land against undesirable change or human activity.
Educational purposes:	Crèches
	Schools
	Lecture halls
	Monasteries
	Public libraries
	Art galleries
	Museums
	Colleges
	Universities
Government purposes	Associated with the use of land by the national government, a provincial government or a municipality to give effect to its governance role.
Industrial purposes	Manufacturing
	Altering
	Repairing
	Assembling or processing of a product

	Dismantling or breaking up of a product
	Processing of raw materials
	Noxious activity
Institutional purposes	Charitable institutions
	Hospitals
	Nursing homes
	Old-age homes
	Clinics
	Sanatoriums
Mining purposes	Mining
Public purposes	Open space
	Public Park
	Public garden
	Recreation sites
	Sports fields
	Public squares
	Places for religious gatherings
Recreation purposes	Entertainment
	Leisure

	Sports activities
	Amusement facilities
	Recreational activities
Residential purposes	Dwelling house
	Group housing
	Hotels
	Flats
	Boarding houses
	Residential clubs
	Hostels

Preferred land uses in certain areas were indicated by overlays. An example of preferred land uses in a nodal area is indicated below.

Table 22: Preferred land uses in a node

Land use - preferred land use	Land use - preferred land use
Low-density residential	
Medium density residential	•
High density residential	•
Auto Trade	•
Business/Retail	•

Commercial	
Community facilities	•
Light Industrial	
Heavy Industrial	
Medical facilities	•
Offices	•
Entertainment	
Municipal	•
Government	•
Sport Stadiums and Facilities	•
Public Open Space	•

Source: Department of Rural Development and Land Reform

The previous three schemes in the municipal area were consolidated and integrated into the wall-to-wall land use scheme. An example of a consolidated scheme is the Johannesburg Land Use Scheme 2011. The classification could be derived from existing land use schemes. A review of the scheme was useful in terms of the review of the consolidation of the different definitions, which were integrated.

The Table below reviews the previous three town planning schemes within the Nkomazi municipal area and the broader definition as per SPLUMA as an example of the differences between the land use zonings of Residential 1 and Residential 2 and their respective definitions.

Malelane represents a three-tiered land use classification and Komatipoort and Marloth Park represent a two-tiered land use classification.

Table 23: Town Planning Schemes to be integrated in wall-to-wall scheme: Greater Malelane Town Planning Scheme 1997; Komatipoort Town Planning Scheme 1992; and Marloth Park Town Planning Scheme 2000

Greater Malelane Town Planning Scheme 1997				
Use Zone	Purpose for which Land may be used	Purpose for which land may be used only with written approval of the council	Purpose for which land may be used only with consent of the council	Purpose for which land may not be used
Residential 1	Dwelling Houses; with a density of one dwelling house per erf.	Second Dwellings	Guest Houses; Places of Public Worship; Places of Instruction; Social Halls; Sports & Recreational Clubs; Medical Suites and Offices as a secondary use.	Uses not in Columns (3) to (5)
Residential 2	Dwelling Units and Residential Buildings; with a maximum density of 20	Guest Houses; Retirement Centres; Places	Dwelling units and Residential Buildings with a density of more than 20	Uses not in Columns (3) to (5).

	dwelling units per hectare.	of Public Worship.	dwelling units per hectare; Places of Instruction; Social Halls; Sports and Recreation Clubs; Hotels; Public or Private Parking areas; Medical Suites and Offices as a secondary use.	
Definitions: Dwelling house means a detached building which is designed and used as a self-contained unit which includes cooking, eating, sleeping, living and sanitary facilities, forming a single building and may also include outbuildings ordinarily required in connection with the use of the Dwelling House and which may be separated from the Dwelling House. Dwelling unit means an interconnected suite of rooms including a kitchen or scullery, designed for occupation by a single family, and which may also include such outbuildings and servants' quarters normally connected therewith.				

Komatipoort Town Planning Scheme 1992				
Use zone	Buildings which may be erected and purposes for which they can be used	Buildings which may be erected and purposes for which they may be used only with the special consent of the local authority	Buildings which may not be used or erected	
Residential 1	Dwelling houses	Places of public worship, places of instruction, social halls, institutions, special uses.	Buildings not in columns (3) and (4)	
Residential 2	Dwelling units	Places of public worship, places of instruction, social halls, institutions, special uses.	Buildings not in columns (3) and (4)	
Definitions: “Dwelling house”- a single detached dwelling unit. “Dwelling unit”- means an interconnected suite of rooms which may not include more than one kitchen, designed for occupation and use by a single family and includes such outbuildings and servant’s quarters as are ordinarily incidental thereto.				

Marloth Park Town Planning Scheme 2000				
Use zone	Purposes for which buildings and land may be used:			
	May be erected and/or used	May be erected and/or used only with the consent of the municipality	May not be erected and/or used	
Residential 1	Dwelling Houses	Places of Instruction, Institution, Medical Consulting Rooms, Public worship, Social Halls, Special uses, Residential buildings, Guest house, Eco Nursery, Lodges	Uses not under columns (3) and (4)	

Residential 2	Dwelling units, Guest house	Public worship, Place of instruction, Social Halls, Special uses	Uses not under columns (3) and (4)	
Definitions: “Dwelling house”: A single detached dwelling unit with a minimum area of 60m ² . “Dwelling unit”: Means a suite of rooms which may not include more than one kitchen, designed for occupation and use by a single family and includes such outbuildings and servants’ quarters as are ordinarily incidental thereto.				
SPLUMA				
Definition: “residential purposes” means purposes normally or otherwise reasonably associated with the use of land primarily for human habitation, including a dwelling house, group housing, hotels, flats, boarding houses, residential clubs, hostels, residential hotels and rooms to let.				

The categorisation of *Residential Purposes* is illustrated in the table above.

The broader residential classification or grouping is defined by SPLUMA as above. The proposed land use scheme falls within the borders of the definition. The three existing schemes had similar, but different definitions and delineations of Residential 1 and 2 land uses. The similarities were considered, for instance Residential 1 represents “Dwelling Houses” in their primary use but have different uses as their secondary use as well as restrictions. Residential 2 refers to “Dwelling units” as a general primary use for all three schemes, but there are differences. The classification and definitions were aligned,

integrated and adjusted to suit SPLUMA, keep current land use rights secure and provide flexibility.

The definitions had to allow flexibility to accommodate the context for each unique area within the municipality. The Department of Rural Development and Land Reform made use of the following example

Although the two definitions are for the same land use and contain elements that sound similar (freestanding = detached, single family = one family etc.), they will always be subject to interpretation.

Consider the two definitions below, both are definitions from land use schemes for a dwelling house.

Table 24: Table: Definitions of a dwelling house from two different schemes

Definition of a Dwelling House: KZN Ethekwini Outer West Town Planning Scheme (amended May 2004)	Definition of a Dwelling House: Consolidated Johannesburg Town Planning Scheme (2011)
Means a freestanding dwelling unit used as a dwelling for a single family, together with such outbuildings as are ordinarily used therewith.	Means a detached self-contained inter-leading suite of rooms containing a kitchen with or without an ancillary scullery and the appropriate ablutions, used for the living accommodation and housing of one family, together with such outbuildings and subsidiary dwelling unit as is ordinarily permitted therewith, as long as the subsidiary dwelling unit comply with the process stipulated in the Town Planning Scheme in Use Zone “Residential 1”; provided that a second kitchen, which is to be used for

	religious purposes and which is physically connected with the first kitchen, may be provided to the satisfaction of the Council. An entertainment, reception and/or living area within a dwelling house or part of a reasonably required and ancillary outbuilding (See “outbuilding” definition), may include a wash-up area used exclusively for that purpose.

Source: Rural Development and Land Reform 2013

The Department of Rural Development and Land Reform developed a land use classification system in 2009, that was motivated by Geographic Information System mapping which consisted of 14 main classes, 61 secondary classes and 464 tertiary classes.

Table 25: Department of Rural Development and Land Reform classification system

Main Use		Secondary Use (s)	
1	Agriculture and Fisheries	1.1	Commercial Agriculture
		1.2	Subsistence Agriculture
		1.3	Small Scale Agriculture
		1.4	Grazing
		1.5	Fisheries
2	Forestry	2.1	Managed Forest Plantation
		2.2	Managed Natural (Indigenous) Forest
		2.3	Unmanaged Forest Plantation

		2.4	Unmanaged Natural (Indigenous) Forest
3	Conservation	3.1	National Parks
		3.2	Nature Reserves
		3.3	Conservation Areas
4	Mining	4.1	Mineral Workings and Quarries
5	Transport	5.1	Transport Tracks and Ways
		5.2	Transport Terminals and Interchanges
		5.3	Car Parks
		5.4	Other Vehicle Storage
		5.5	Goods and Freight Handling
		5.6	Waterways
6	Utilities and Infrastructure	6.1	Energy Production and Distribution
		6.2	Water Storage and Treatment
		6.3	Sewerage Treatment Plants
		6.4	Refuse Disposal
		6.5	Cemeteries and Crematoria
		6.6	Post and Telecommunications
		6.7	Bulk Pipeline Networks
7	Residential	7.1	Formal Single Residential

		7.2	Formal Multiple Residential
		7.3	Residential in Rural Village
		7.4	Informal Residential
		7.5	Hotels, Boarding and Guest Houses
		7.6	Residential Institutions (hostels etc.,)
		7.7	Dispersed Residential
8	Community Services	8.1	Health Care Facilities
		8.2	Places of Worship
		8.3	Education
		8.4	Community Facilities
		8.5	Administrative Facilities
9	Commercial	9.1	Retail
		9.2	Financial Institutions
		9.3	Restaurants and Cafés
		9.4	Bars, Taverns and Night Clubs
		9.5	Offices
		9.6	Informal Trading
10	Industrial & Storage	10.1	Light Industries
		10.2	Heavy Industries

		10.3	Storage
		10.4	Wholesale Distribution
11	Recreation and Leisure	11.1	Open Spaces
		11.2	Amusement and Show Places
		11.3	Libraries, Museums, Art Galleries
		11.4	Sports Facilities
		11.5	Resorts
12	Protection Services	12.1	Defence
		12.2	Police
		12.3	Emergency Services
		12.4	Correctional Services
13	Undeveloped Land	13.1	Undeveloped Land
14	Water	14.1	Surface water used for storage
		14.2	Surface water used for recreation
		14.3	Surface water used for irrigation

The review and consideration of this classification system contributed to a more precise classification of land uses in the developed scheme.

The National Environmental Management: Protected Areas Act (NEMPA) of 2003 poses an established classification as indicated below. The classification provides six main classes and 41 sub-classes.

Table 26: NEMPA classification of areas

Main Class Sub-Class	Main Class Sub-Class
A Core	Statutory protected area
B Buffer	Non-statutory conservation areas
	Ecological corridors
	Urban green areas
C Agricultural areas	Extensive agricultural areas
	intensive agricultural areas
D Urban related	Main towns
	Local towns
	Rural settlements
	Tribal authority settlements
	Communal settlements
	Institutional areas
	Authority areas
	Residential areas
	Business areas
	SMME incubators
	Mixed use development areas

	Cemeteries
	Sports fields and infrastructure
	Airport and infrastructure
	Resorts and tourism related areas
	Farmsteads and outbuildings
E Industrial areas	Agricultural industry
	Industrial development zone
	Light industry
	Extractive industry
F Surface infrastructure and buildings	National roads
	Main roads
	Minor roads
	Public streets
	Heavy vehicle overnight facilities
	Power lines
	Telecommunication infrastructure
	Renewable energy infrastructure
	Dams and reservoirs

	Canals
	Sewerage plants and refuse areas

The Northern Cape Province developed a classification system of categories called the Spatial Planning Categories (SPCs). It was developed to facilitate rational decision-making in the province related to the SDF's and IDP's.

The classification can be seen below:

Table 27: Northern Cape land use classification – Spatial Planning Categories (SPCs)

Category	Spatial Planning Category	Zoning
Core Areas	Protected area	
	Wilderness area	
	Special Nature Reserve	
	Conservation area	
Buffer Green areas	Contractual Conservation Area	
	Private conservation area	
	Ecological conservation area	
	Urban green area	Public parks
		Landscaped areas
Agricultural areas	General farming	Game farms
		Stock farms
	Intensive agriculture	Irrigated land
	Cultivated area	
	Plantation	
Urban Related areas	Residential	Single residential house
		Group housing

		Guest house
		Flats/residential building
		Mixed density residential
		Area
		GAP housing
		Subsidised housing
		Informal housing
		Small-holdings
		Residential estate
	Business	Primary retail
		Business premises
		Supermarket
		Shop
	Service-related business	Service trade
		Service station
	Special business	Casino
		Adult entertainment
		Liquor store
	Commercial Business	

	SMME	Incubator
		Tuck-shop
		Tavern
	Mixed-use development	Residential/light business;
		Light industry/light
	Open Space	Cemeteries excluding crematoria
		Sports fields and Infrastructure
		Parking areas and services
	Transportation	Airport and infrastructure
	Resorts	
	Tourism-related area	Hospitality corridor
		Farmsteads and outbuildings
		Main farmsteads
Industrial areas	Agricultural industry	Silos
		Packing facilities
		Wine cellars
	Industrial Development	
	Light industrial	Service industry repair

		Warehouses
		Service station
	Heavy industrial	Chemical works,
		Brewery
		Abattoirs
		Processing of hides
		Crematoria
		Stone-crushing
	Extractive Industry	Settlements and infrastructure
		Multiple consumptive resource extraction, e.g. mining
Surface infrastructure and buildings	Road and street transport	National roads
		Main roads: provincial and regional roads
		Minor roads: regional and local roads
	Public streets	Public streets and parking areas

		Overnight facilities
	Railway lines	Railway lines and associated infrastructure
	Power lines	Power lines and associated sub-stations and infrastructure.
	Telecommunication infrastructure	Radio/wireless communication
		Telecommunications, which may include antennae, any support structure, and ancillary structures
	Renewable energy zone	Wind turbine or solar voltaic apparatus
	Dams and Reservoirs	Major dams and reservoirs
	Canals	Irrigation canals and storm water
	Sewerage Plants	Municipal sewerage treatment plants
		Private sewerage treatment
	Refuse Areas	Refuse landfill site
	Science and technology	Science and technology areas

		SKA designated astronomy reserve
Other	Undetermined land	
	Special	
	Sub-divisional area	
	Special consent	

The KwaZulu-Natal Province developed a land use classification, which was derived from SDF land use and is referred to as KwaZulu-Natal Guidelines for land use management schemes. It provided 11 main classes, 33 secondary classes and 72 tertiary classes.

KwaZulu-Natal Province has spent some years developing a strategy to manage or accommodate traditional areas, because a significant percentage of the province's population resides in traditional authoritative areas. Nkomazi has eight traditional authoritative areas, and it was useful to review their definitions and classifications.

Below is an extract of definitions for traditional areas in KwaZulu-Natal.

AGRICULTURE	
USE	DESCRIPTION
<i>Imizi</i>	This is a residential land use used primarily for shelter in Traditional Council Areas
<i>Izigodlo</i>	While primarily used for royal residence, <i>izigodlo</i> often serve as administrative and recreational zones hosting traditional rites and festivities such as <i>ukuhlolwa kwezintombi</i> (virginity testing). These are solely regulated by royal families and the location of these is largely informed by traditional considerations for safety and security.
<i>Izigcawu</i>	<i>Izigcawu</i> provide platforms for cultural festivities such as <i>imigcagco</i> , <i>imemulo</i> , etc. and accessible to all people. Such land uses are important in facilitating and maintaining community relations.
<i>Amasimu and izivande</i>	These uses are for agricultural purposes and are used to support life in rural areas. Once these have been identified and approved they need to be geo-referenced and be included in the RLUP that guides decisions pertaining to land use.
<i>Izishozi</i>	These are lightning prone areas – normally located on mountain hills – and form part of natural disasters of the areas. These areas must be properly geo-referenced and be included in the RLUP that guides decisions pertaining to land use.
<i>Amathuna</i>	<i>Amathuna</i> provide land for burial purposes. Two types of burial systems exist in rural areas and these are household and communal cemeteries. Tradition – culture and customs – regulates household burials, while the municipality bylaws regulate the communal cemeteries.

Table 28: KwaZulu-Natal traditional authority land use descriptions

The Department of Rural Development and Land Reform developed the Spatial Planning and Information System (SPISYS) with the provincial government of the Free State and Northern Cape. It was developed for GIS data sets. It recognises 23 main classes, 170 secondary classes and approximately 720 tertiary classes.

Table 29: SPISYS land use classification

Service type	Source group	Source
Agriculture	Agri industry	Abattoirs
		Co-operatives
		Equipment manufacturing
		Food processing
		Fresh produce markets
		Grain mills
		Grain storage
		Sugar mills
		Wine cellars
	Agri-institutions	Agricultural colleges
		Food producer associations
	Agri-services	Agri-climate stations
		Agri-extension offices
		Agri-forestry stations
		Agri-research stations
	Crop production areas	Fruit-production areas
		Herbs and spice production areas

		Maize production areas
		Tobacco production areas
		Vegetable production areas
		Wheat production areas
		Wine production areas
	Farm buildings	Farm equipment store
		Farmhouse
		Farm store
		Greenhouse
		Labour house
		Silo
	Farm dams	Farm dam wall
		Rainwater tank

The United Nations' Department of International Economic and Social Affairs developed the Standard Industrial Classification (SIC), which was acknowledged internationally as a set of classification for economic activities.

The SIC Code consists of a 5-digit number with each digit of the code having the following significance: -

- First Digit: Major Division
- Second Digit: Division
- Third Digit: Major Group
- Fourth Digit: Group

- Fifth Digit: Sub-Group

The SIC Codes had the following 10 major divisions:

- Agriculture, hunting, forestry and fishing
- Mining and quarrying
- Manufacturing
- Electricity, gas and water supply
- Construction
- Wholesale and retail trade; repair of motor vehicles, motor cycles and personal and household goods; hotels and restaurants
- Transport, storage and communication
- Financial intermediation, insurance, real estate and business services
- Community, social and personal services
- Private household extraterritorial organisations, representatives of foreign governments and other activities not adequately defined.

This consideration improved the development of the land use scheme.

4.5.4.11 Management overlays

Management overlays served as a form of layers for spatial information and was associated with the largest concentration of a certain kind(s) of land use within a certain area. It also related to intended purposes, linking the land use management scheme to the spatial development framework.

4.5.4.12 Guideline document

A guideline document or land use manual was adjusted throughout the development of the land use scheme, which provided a short, at-a-glance interpretation and or understanding of the logic and functioning of the land use scheme – and how it was derived.

4.5.4.13 Mapping

Norms and standards relevant to land use mapping and symbology had to:

- ensure that land development and land use management processes, including applications, procedures and timeframes are efficient and effective; and must also include:
 - *a report* on and an analysis of existing land use patterns,
 - *a framework* for desired land use patterns,
 - existing and future *land use plans*, programmes and projects relative to key sectors of
 - the economy, and
 - *mechanisms* for identifying strategically located vacant or under-utilised land and for
 - providing access to and the use of such land,
- *standardise the symbology* of all maps and diagrams at an appropriate scale,
- *differentiate* between geographic areas, types of land use and development needs.

The mapping included the reflection of the current legal land use rights in the form of zoning, that simultaneously indicated property boundaries in the cadastral framework. The scheme map consists of an index map that shows the entire municipal area, together with map sheets that indicate the concentration or zoomed-in view of land uses around certain known areas (see map below as an example).

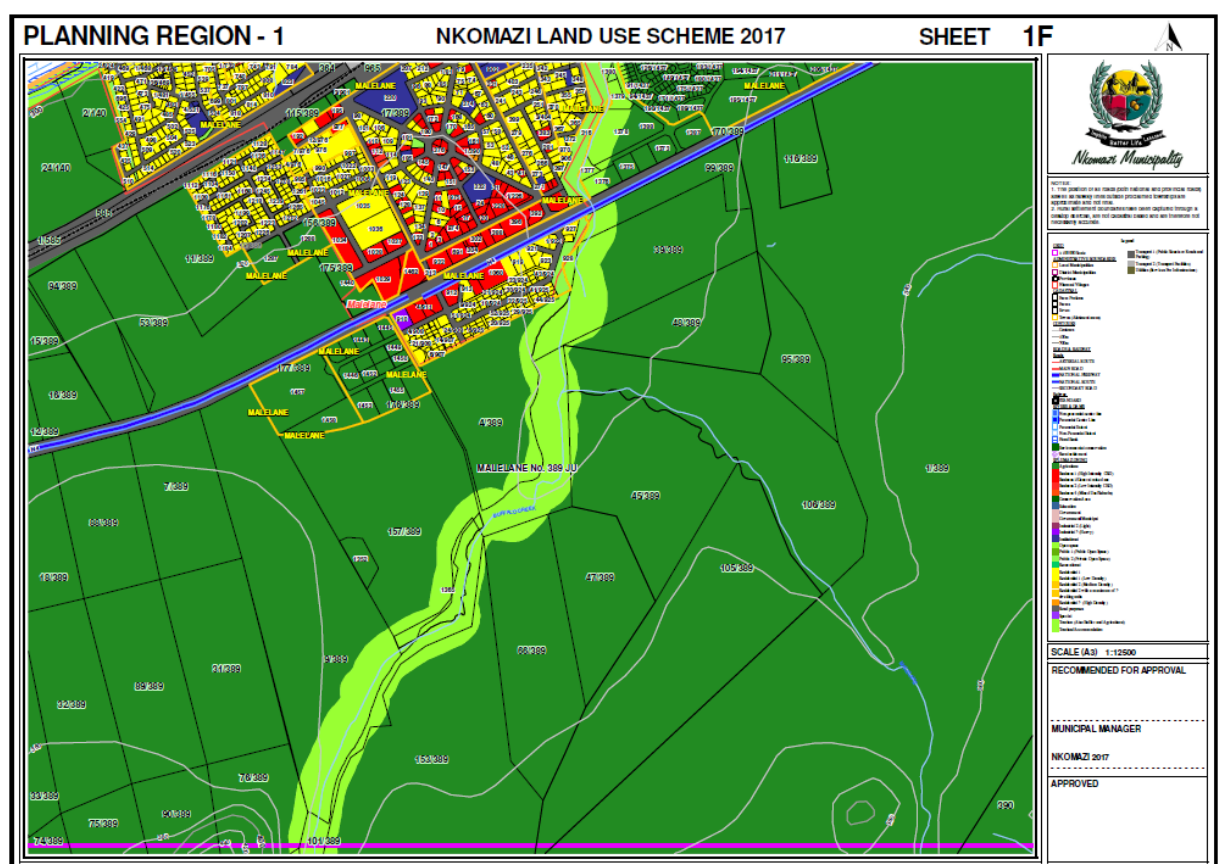


Figure 26: The map indicates an excerpt of the land use scheme map

Source: Nkomazi SDF 2018

Biodiversity areas had to be included in the LUS maps as part of its requirement. A layer for the Biodiversity areas included: Protected Areas (PAs), Critical Biodiversity Areas (CBAs) and Ecological Support Areas (ESAs) as part of the map sheet base maps.

The Biodiversity areas were included in Part II of the Scheme in the form of tables for the CBSs, PAs, and ESAs individually with the uses that fall within the layer. A separate matrix was also constructed to allow ease of information and orientation to what land uses are compatible with the related areas in terms of the Biodiversity composition of that area. The related land uses were reviewed by the representative for Mpumalanga Tourism and Parks Agency. Applications for new development or significant change of land use within the related Biodiversity areas should request comments from the Mpumalanga Tourism and Parks Agency, however the municipality must consider the comments in alignment with the municipalities vision and principles.

Content of the LUS regulations and/or scheme clauses document		
Three sections	Divisions	Content
Part 1: Standards and guidelines	Regulation, legislation and authority	SPLUMA; SPLUM by-law; authority; Area of LUS; application for the amendment of the LUS; record of amendments to the LUS; legal effect of the LUS; purpose of the LUS; content of the LUS.
	Land Use Scheme register	LUS register; records; amendments to the scheme – the use of annexures.
	Definitions	General and land use definitions.
	Land use control	Conditions applicable to all erven; erection and use of buildings and/or use of land; buildings – positioning and development; buildings used for more than one purpose; continued and temporary uses; conditions applicable to public garage erven; conditions applicable to townships or erven in dolomite areas or on land with detrimental soil conditions; parking and loading facilities; density; floor area; coverage and height; building lines, building restriction areas and lines of no access; maintenance of bui

		dings, gardens and sites; placement of vehicles in residential zoned areas; exemption of existing buildings; excavations and boreholes; protection of land and environment; stormwater and drainage; conditions applicable to specific developments; general development regulations.
Part 2: Interpretation of the land use hierarchy	Land use categorisation hierarchy	Primary land use – permanent land use; secondary and tertiary land use – temporary use; agricultural areas; buffer areas; traditional areas; urban areas.
	Zoning tables	Agriculture; Business 1; Business 2; Business 3; Business 4; Commercial; Community; Conservation; Education; Government; Industrial 1; Industrial 2; Industrial 3; Industrial 4; Institutional; Mining; Public 1 – Public open space; Public 2 – Private open space; Public 3 – Nature reserve; Recreational; Residential 1; Residential 2; Residential 3; Residential 4; Residential 5 – rural residential/mobile dwelling units; Transport 1- Public streets or roads and parking; Transport 2 -Transport facilities; Transpo t 3 – Private roads and parking; Special; Special Economic Zones (SEZ); Tourism; Utilities; Lebombo Border; Mixed use.

		Zoning matrix
Part III: Application processes and procedures	Applications and process of applications	Township establishment; zoning and rezoning of land; removal, amendment or suspension of restrictive or obsolete condition, servitude or reservation registered against the title of land; consent use; temporary use; traditional use; amendment or cancellation of general plan; subdivision and consolidation; permanent closure of public places.
	General arrangements applicable to all applications	Engineering services and development charges: Engineering services: Responsibility of providing engineering services; installation of engineering services; engineering services agreement; effect of abandonment or lapsing of land development approval on engineering services; internal and external engineering services; payment of development charge; offset of development charge; payment of

		development charge in instalments; refund of development charge; general matters relating to contribution charges. General: ownership of public places and land required for municipal engineering services and social facilities; restriction of transfer and registration; first transfer; certification by municipality; national and provincial interest.
	Application procedures	General application procedures: Procedures for making application; information required; application fees; grounds for refusing to accept application; receipt of application and request for further documents; additional information and documents; withdrawal of application or authority; notice of applications in terms of integrated procedures; notification of application in media; serving of notices; content of notice; additional methods of public notice and proof of service; requirements for petitions; requirements for objections or comments; amendments prior to approval; further public notice; cost of notice; applicants right to reply; written assessment of application; decision-making period; failure to act within time period; powers to conduct routine inspections; determination of application; notification of decision; duties of agent of applicant; errors and omissions; withdrawal of approval.

	Appeal	

The LUS clauses and/or regulations form the core of the LUS that provides the standards and guidelines of applications and developments within the municipal area; it stipulates the land use scheme register and records of amendments; the needed land use and general definitions; explains land use control in various contexts including building control and stormwater; it provides the land use categorisation and land use matrix as well as guidelines for areas such as buffer areas, traditional areas, agricultural and urban areas; it explains the different zonings and requirements; it explains the processes of applications and the possible different applications; general arrangements of applications; as well as application procedures.

The table below is an example of one of the land uses of Agriculture. Significant land uses were practised on land that had been deemed and zoned as Agricultural but were used for different purposes. This had to be accommodated in specific regulations for specific areas. For instance, some of the regulations used in the agriculture descriptions and mentioned regulations, were specifically part of the Conservation category as well, which had a similar matrix sheet in terms of the framework, but certainly different in content.

Table 31: Example of land use category stipulations in scheme: Agriculture

LAND USE CATEGORY: AGRICULTURE								
ZONING: AGRICULTURE ZONE					PURPOSE: AGRICULTURE			
OBJECTIVE:					PRIMARY USE DEFINITION			
To provide for the use of land for the purposes of agricultural production. Protect the natural resource base and ensure sustainable agricultural activities by controlling activities and land use on agricultural zoned land. Provide for the development of agricultural land by allowing buildings and activities subservient and complementary to the agricultural purposes.					Agriculture: Means practices normally or otherwise reasonably associated with the use of agricultural land for crop and rangeland production, animal production including wild animals, forestry and logging, fishing and aquaculture, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the agricultural use of land. Agriculture also means the science, art, practice or occupation concerned with the active production of useful plants, fungi or animals for - food, fibre, bio-fuel, or other products with the primary purpose to sustain and enhance human life, and varying degrees the preparation and marketing of the resulting products (source: Preservation and development of agricultural land bill 2017, DAFF).			
PRIMARY USE	PRIMARY USE INCLUDES THE FOLLOWING USES				CONSENT USE (SECONDARY)	TERTIARY USE		NOT PERMITTED
Agriculture	Agricultural Buildings Agricultural Purposes Animal Refuge Dwelling House Dwelling Unit Nursery				Additional Dwelling Unit Agricultural Industry Airfield Bed and Breakfast Conference Facility Crèche Farm Stall Government Purposes Guest House Heliport Home Business/Home Enterprise Landfill Lodge Medical Consulting Rooms Municipal Purposes Place of Education Place of Instruction Place of Public Worship Restaurant Shop Social Facility Tavern Telecommunications and Infrastructure Veterinary Clinic or Animal Hospital	Agro-Processing Auction Centre/ Yard Camping ground or site/ Caravan Park Club Hotel Mobile Dwelling units Motor Vehicle Sales market/ Dealership Nature Reserve Place of Amusement Place of Assembly Place of Leisure Place of Refreshment Private Club Processing of Product Recreational Purposes Social Halls Special Economic Zone Special Use Sport and Recreational Clubs Take-Away Shop/ Business Tourism Tourist Facilities Town Houses Transport Purposes Truck Stop Waste Disposal Site Whole sale trade 4x4 Trail Zoological Garden		
DEVELOPMENT PARAMETERS/REGULATION								
DENSITY	MINIMUM ERF SIZE	HEIGHT (MAXIMUM)	COVERAGE (MAXIMUM)	F.A.R (MAXIMUM)	BUILDING LINES			PARKING
					STREET	REAR	SIDE	
As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	10	5	5	N/A
COLOUR CODE								
R = 34 ; G = 139 ; B = 34								

AGRICULTURE: ADDITIONAL CONTROLS

1. Agricultural Land along the N4 in the area of the Lebombo Border Post

Permitted uses as approved by Council for this area may include: Dwelling Houses, Dwelling Units, Place of Instruction, Social Halls, Sports and Recreational Clubs, Places of Refreshment, Shops, Residential Buildings, Informal Trade, Bus/Taxi Termini, Facilities related to rail transport, Use related to the international border post, Tourism related uses, Railway Purposes, Industries (excluding Noxious Industries), Workshops, Commercial uses, Offices related to and subservient to the main uses, and Retail in goods manufactured, Processed or Assembled on the property and Industrial Related Products, Service Stations, Service Industries.

2. Minimum Subdivision of Agricultural or Farm land is 1Ha.

3. Any new proposed development will be subject to the National Environment Management Act 1998 (NEMA) and Policy and Regulations.

4. Agricultural land around the Malelane Town – This area refers to all the agricultural land around the urban built-up and environment and largely falls beyond the urban edge.

Permitted uses in this area, subject to the scrutiny of the Municipality include: Dwelling Houses, Guest houses, Place of public worship, Place of instruction, Social halls, Sports and recreational clubs, Medical suites and offices as secondary use.

Density: One dwelling house per stand is standard. Minimum township stand size is 600m².

No middle to high density developments (i.e. 20 du/ha to 75 du/ha) permitted

Only new township establishments with densities not less than 12 dwelling units per hectare permitted– i.e. 600m²

The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood

New land use applications to be approved only where infrastructure services do permit.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township

All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services.

The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality

All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure

The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications should comply with the submission requirements promulgated in legislation and this Scheme.

All land use management generating development will be subjected to Development Contribution.

All development proposals to indicate in detail the need and desirability.

The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings.

No development on slopes steeper than a gradient of 1:5 or 20% will be permitted.

No development impacting on or affecting the natural skyline shall be permitted.

Environmental sensitivities should inform the spatial layout pattern in terms of locality, extent and positioning of cluster and space developments.

5. Kruger National Park, High Potential Agricultural Land –and Marloth-Park: The majority portion of this land in this zone is the Kruger National Park. This area is located on the southern border of the Kruger National Park and a large area of land is part of the entire nature conservation park area. The area is surrounded by low density middle income houses and/or dwelling units to the east and west as well as the south. The land use comprises of primarily conservation type of land use.

Permitted uses: Non-permanent tourism related activity uses only. No new development is to be permitted within the nature conservation zone.

Density and Subdivision: No subdivision of land permitted. The existing use will prevail.

Special conditions: No land use activity not compatible with the nature conservation type of land use permitted.

No development is to be permitted on slopes steeper than 1 in 5 gradient and in the 1 in 100 year flood level.

All river valleys and ground with slopes equal to or exceeding 1 in 5 should be demarcated as no development areas.

No development should be located within 300m of high water mark.

6. Lionspruit and Agricultural land around Marloth Park

The zone is predominantly agricultural in use. Half of the area is a nature conservation area known as the Lionspruit.

Permitted Uses: Nature Conservation, Agriculture and erection and or use of building for the purposes subservient to the main use.

Density and subdivision: No subdivision of land to portion less than 1,5 ha permitted. The existing use will prevail.

Special Conditions: No land use activity not compatible with the nature conservation type of land use permitted.

No development is to be permitted on slopes steeper than 1 in 5 gradient and in the 1 in 100 year flood level.

New land use applications to be approved only where infrastructure services do permit.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

AGRICULTURE: ADDITIONAL CONTROLS

7. Pholane Township and Agricultural land to the west of the town Komatipoort

The area lies between the railway lines to the north east of the Komatipoort CBD. This is the only part of town where government subsidized housing opportunities, in a form of low density housing, are located within relatively easy walking distance. The area is subject to land invasion. The area is earmarked for future residential development.

Permitted uses: Dwelling Houses, Place of public worship, Place of instruction, Social halls, Sports and recreational clubs, Places of refreshment, Shops, Dwelling units, Residential buildings, Informal trade.

Density and subdivision: One dwelling house per stand. Minimum township stand size - 300m². Minimum subdivision of farm land stand – 1ha

Special Conditions: Only new township establishments with densities not less than 20 dwelling units per hectare permitted

The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood

New land use applications to be approved only where infrastructure services do permit.

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township.

All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services.

The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality.

All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure

The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications

should comply with the submission requirements promulgated in legislation and the applicable Zoning Scheme. The accurate use of zoning categories will inform the municipal rating system.

All land use management generating development will be subjected to the Development Contribution.

All development proposals to indicate in detail the need and desirability.

The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings.

8. Agricultural Land and Lebombo Border Post – Komatipoort

This area is bounded by Nkomati River and Railway lines to the north and is characterised by land uses related tourism and rail and road public transport. It is located directly adjacent to the N4 National Road.

Permitted Uses: ☐ Dwelling Houses, Dwelling units, Place of instruction, Social halls, Sports and recreational clubs, Places of refreshment, Shops, Residential buildings, Informal trade, Bus/Taxi Termini, Facilities related to rail transport, Use related to the international border post, Tourism related uses, Railway purposes, Industries, (excluding noxious industries), Workshops, Commercial uses, offices related to and subservient to the main uses, and Retail in goods manufactured, processed or assembled on the property and industrial related products, Service stations, Service industries.

Density and Subdivision: ☐ Dwelling units and Residential buildings with a density of more than 20 dwelling units per hectare.

Minimum density - 20du/ha -300m² ☐ Maximum density is 75du/ha – 80m² ☐ Minimum subdivision of farm land – 1ha

Special Conditions: ☐ Only new township establishments with densities not less than 20 dwelling units per hectare permitted.

The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood.

New land use applications to be approved only where infrastructure services do permit.

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township.

All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services.

The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality.

All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure

The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications

should comply with the submission requirements promulgated in legislation and the applicable Zoning Scheme. The accurate use of zoning categories will inform the municipal rating system.

All land use management generating development will be subjected to the Development Contribution.

All development proposals to indicate in detail the need and desirability.

The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings.

Another example of the use of the zoning categories, which includes definitions, purposes, primary uses, consent uses, possible rezoning uses and not permitted uses, are indicated below in terms of the educational zoning. This framework was developed for each possible zoning or use within the municipal area, as well as for the special management areas.

Table 32: Example of land use category stipulations in scheme: Education

LAND USE CATEGORY: EDUCATION				
ZONING: EDUCATION		PURPOSE: EDUCATIONAL		
OBJECTIVE:		PRIMARY USE DEFINITION		
• Provide for educational facilities including Creche, Nursery School, Schools, Colleges, Universities, Technical Universities, Technical Colleges, either public or private. • Recreational Facilities, which are ancillary to the Place of Instruction or Educational Facility.		Education: means purposes normally or otherwise reasonably associated with the use of land primarily for instruction or teaching purposes, including crèche, schools, lecture halls, monasteries, public libraries, art galleries, museums, colleges and universities.		
PRIMARY USE	PRIMARY USE INCLUDES THE FOLLOWING USES	CONSENT USE (SECONDARY)	TERTIARY USE	NOT PERMITTED
Educational	Art Gallery Boarding House Crèche Educational Purposes Institutional Purposes Museum Office Use Place of Education Place of Instruction Place of Public Worship Recreational Purposes Social Hall Sport and Recreational Clubs/ Grounds School Teaching Lecture Hall Monastery Library (Public) College University Training Centre	Dwelling House Dwelling Unit Flea Market Residential Buildings Residential Purposes Telecommunication and Infrastructure Zoological Garden	Canteen Clinic Retirement Centre Special Use	Airport Builders Yard Car Wash Cemetery Correctional Facility/ Prison Crematorium Distribution Centre Dry Cleaners Filling Station/ Public Garage/ Fuelling Station Funeral Parlour Garden Service Business Government Purposes Hotel Industrial Development Zone Industrial Extractive Landfill Laundrette/ Laundry Medical Consulting Rooms/ Suites Mining Purposes Motor Vehicle Sales/ Dealership Motor Workshop Municipal Purposes Nature Reserve Panelbeating Place of Entertainment Recycling Centre Refuse Disposal Scrap Yard Sewer Purification Plant Truck Stop Utility Facility Veterinary Clinic or Animal Hospital Warehouse Waste Disposal Site Workhouse

Table 33: Excerpt of the developed matrix for land uses and related zoning in the scheme

	AGRICULTURE	BUSINESS 1	BUSINESS 2	BUSINESS 3	COMMERCIAL	COMMUNITY	CONSERVATION	EDUCATIONAL	GOVERNMENT	INDUSTRIAL 1	INDUSTRIAL 2	INDUSTRIAL 3	INSTITUTIONAL	MINING	PUBLIC 1	PUBLIC 2	PUBLIC 3	RECREATIONAL	RESIDENTIAL 1	RESIDENTIAL 2	RESIDENTIAL 3	RESIDENTIAL 4	RESIDENTIAL 5	TRANSPORT 1	TRANSPORT 2	TRANSPORT 3	SPECIAL	SEZ	TOURISM	UTILITIES	LEBOMBO BORDER	MIXED USE	
TABLE: LAND USE DEFINITIONS																																	
AGRICULTURAL BUILDING	•				•				■	■	•			◊								▲	▲							■	•		
AGRICULTURAL PURPOSE	•		◊		•	◊	◊		■	■	■		■		■	■						•	▲				▲			■	•	•	
AGRO-PROCESSING	▲	◊									•	•	•									▲									▲	■	
AIRFIELD	■			◊	■	■			■			•						■				■				•	•		■	■			
AIRPORT		◊	◊	▲	◊		◊	◊	■	■				◊	◊	◊	◊	◊	◊	◊	◊	▲	◊			•	•		■	■			
ANIMAL REFUGE	•						•						•										■										
ARTS AND CRAFTS WORKSHOP											•																				•		
ART GALLERY		•	•	•	•			•					•																		•		
AUCTION CENTRE/YARD	▲	▲	◊	■	•					•	■	■																					
BAKERY/CONFECTIONARY		•	•	•						•																							
BAR		•	•	•																													
BED AND BREAKFAST	■		•	■	■	■													■	■	▲	■	■							•	•	•	
BOARDING HOUSE		•	•	▲		▲		•	◊	◊	◊	◊	■	◊	◊	◊	■	◊		▲	•	■	■							•			
BOTANICAL GARDEN										•								•	•	•											•		
BUILDERS YARD		◊	◊	◊	■	◊	◊	◊	◊	•	•	•	◊	•	◊	◊	◊	◊	◊	◊	◊			◊					■				
BUSINESS PURPOSES		•	•	•	■					■	■			•					▲	▲	▲								▲	•	▲	•	•
BUS BAYS					•																				▲	•	■		■		•		
BUS TERMINI					•																				■	•	■		■		•	•	
CAMPING GROUND OR SITE/CARAVAN PARK	▲	◊	◊						■		◊	◊	◊	◊	▲	▲	■	▲	◊	◊	◊		•							•			
CANTEEN		▲	▲	▲				▲	▲	▲	▲	▲	▲	▲				▲												▲			
CAR WASH		■				◊	◊	◊	◊	•	■	■	◊	◊					◊	◊	◊									▲			
CHARITY/NON-PROFIT ORGANISATION					•								•																				
CEMETERY		◊	◊	◊	◊	◊	◊	◊	•	■		■	■	◊	▲	▲		◊	◊	◊			◊										
CLINIC		■	■	■	■	•	▲	▲		■	■	■	•	■					▲	▲	▲	▲											
CLUB	▲	•					▲								•	•														▲			
COMMERCIAL PURPOSES					•					•	•	•														•	▲	•			•	•	
COMMUNITY PURPOSES				■		•			•						•	•	■	■							■	▲		■			•	•	
CONFERENCE CENTRE	■		■		•										■	■	•	•											▲	•		■	
CONSERVANCY							•				•					•	•	•				▲	•										
CONSERVATION PURPOSES							•		•							•	•	•				•	•					▲		•			
CONVENTION CENTRE					•					■		◊	▲		▲	▲	■	•	◊	▲										•			
CORRECTIONAL FACILITIES/PRISON		◊	◊	◊	◊	◊	◊	◊	•	◊	◊	◊	•		◊	◊	◊	◊	◊	◊	◊	◊	◊						◊		■		
CRÈCHE	■	■	•	■	■	•	•		◊	◊	◊	◊							■	■	■	■	■									•	
CREMATORIUM		◊	◊		◊	◊	◊		•	■		■	■	◊	▲	▲		◊	◊	◊	◊	◊		◊									
CULTURAL ACTIVITIES						•	•	■							•	•														■			
CULTURAL HERITAGE SITE						•	•								•	•														•			
DISTRIBUTION CENTRE					•			◊		▲	▲	▲																					
DRY CLEANERS		•	•	•		◊	◊	◊		■									◊														
DWELLING HOUSE	•	■	■	■	■	▲		■	■		▲		■		■	■	■	■	▲	•	•	•	•	•						•	•	•	
DWELLING UNIT	•	■	■	■	■	■	■	■	•	◊	◊	◊	■	■	■	■	■	■	■	■	■	▲	•	•		•			▲		•	•	
EDUCATIONAL PURPOSES		▲	■	▲		■		•	•	■			•					■			▲	▲						▲	■		•		
FARM STALL	■																													■			
FAST FOOD OUTLET		•	•					◊				◊																					
FILLING STATION/PUBLIC GARAGE/ FUELLING STATION		▲	▲	▲	•	◊	◊	◊	◊	•	•	•	◊	■	◊	◊	▲	◊	◊	◊	◊	▲							■	%		■	
FLEA MARKET						■		■	•	◊	◊	◊			▲	▲		■												\$			
FREE PORT																													•				
FREE TRADE ZONE																													•				
FUNERAL PARLOUR		•	•		▲	■	◊	◊	•	•	•	■	▲	◊					◊	◊	◊		◊										
GARDEN SERVICE BUSINESS		■				■			•										▲	■	■												
GOVERNMENT PURPOSES	■	•	•	•			◊		•	•	•	•	▲						▲	■	■				•	•		▲	▲		•	•	•
GUEST HOUSE	■	•	■	■	■	■							■						■	■	■	■	■							•	•	•	
HEALTH AND BEAUTY CLINIC		•	•	•	•			◊	◊	◊	◊	■		■	■			■		▲	▲	■	■							■	•	•	
HELIPORT	■				■														■						•	•			■				
HOME BUSINESS/ HOME ENTERPRISE	■		•																▲	▲	■	■	■									■	
HOSPITAL		•	▲	▲		■			■			◊	■	•	▲	◊	▲	▲			▲	•	■	■						•		■	
HOTEL	▲	•	▲	▲	▲	▲		◊	■	◊	◊	■	▲	◊	▲	▲				▲	•	■	■							•		■	
INDUSTRIAL DEVELOPMENT ZONE		◊	◊	◊			◊	◊	▲	■	▲	▲	■	■	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊			▲	•	◊				
INDUSTRIAL PURPOSES					◊	◊	◊	▲	•	▲	■	■	■	■	•	◊	◊	◊	◊	◊	◊	◊	◊	◊									
INDUSTRY - EXTRACTIVE		◊	◊	◊			◊	◊	▲	◊	◊	◊	▲	•	◊	◊	◊	◊	◊	◊	◊	◊	◊	◊				▲	•	◊			

The matrix above is an excerpt of the combination of the possible land use activities and the possible land use zonings or land uses that were developed for the scheme.

4.5.4.15 The scheme register

The Land Use Scheme Register was required as part of the LUS as per SPLUMA section 25 (2)(c) as well as the Spatial Planning and Land Use Management By-Law (SPLUM By-Law) that preceded the development of the LUS. According to the SPLUM by-law for the municipality, the land use register should include the date of application, name and contact details of the applicant, type of application, township/farm name, erf or farm number, portion/remainder, property description, existing zoning, square metres granted, density, FAR, height (storeys/metres), coverage, building lines, parking requirements, amendment scheme number, annexure number, item number, item date, decision (approved/not approved) and decision date.

Records for and amendments to the scheme

SPLUMA Section 25(2)(c) requires a register of all amendments to the land use scheme and SPLUMA Section 31 (1) indicates that *“The municipality must keep and maintain a written record of all applications submitted and the reasons for decisions in respect of such applications for the amendment of its land use scheme.”* In section 31(2) SPLUMA states that *“The written record referred to in subsection (1) must be accessible to members of the public during normal office hours at the municipality’s publicly accessible office”*. The local municipality’s SPLUM by-law also indicates that:

- *The municipality may keep records in the land use scheme register and the information is regarded as part of the land use scheme.*
- *The municipality must keep and maintain the land use scheme and make accessible to the public.*
- *The municipality must provide a copy to the public if requested and if they have paid the related fee for the copy of the land use management scheme.*

These prescriptions to the records of the land use register were also in line with the Promotion of Administrative Justice Act (PAJA) 3 of 2000 that was enacted to provide for

Section 33(1) of the Constitution that relates to administrative action and the fact that everyone has the right to administrative action that is lawful, reasonable and procedurally fair and in Section 33(2) it indicates that everyone whose rights were adversely affected has the right to written reasons.

4.5.5 The wall-to-wall land use scheme in conclusion

The Nkomazi Land Use Scheme was a wall-to-wall Land Use Scheme, comprising the whole of the Municipal area. The previous three Town Planning Schemes namely: The Greater Malelane Town Planning Scheme 1997; Komatipoort Town Planning Scheme 1992; and Marloth Park Town Planning Scheme 2000; as well as the Nkomazi Urban Density and Services Contribution Policy Guidelines and other relevant Municipal reports were integrated into a framework which was in-line with SPLUMA. Other Land Use Schemes, documents, reports and policies on a national and international scale were reviewed to improve the structure of the Land Use Scheme, which included different government departments and their related documents.

SPLUMA section 26 (1)(b) indicates that an adopted and approved land use scheme *“replaces all existing schemes within the municipal area to which the land use scheme applies”*. The wall-to-wall land use scheme had to incorporate three different Town Planning Schemes that were promulgated from the provincial ordinance of 1986. SPLUMA requires that all these old schemes should be repealed by the new wall-to-wall land use schemes, which it was. The new scheme included all urban areas, agricultural areas, traditional areas in that the scheme has to include the entire municipal area (see Chapter 3 for the changes in municipal boundaries and the authority of the municipality as a reflection of its transformation).

SPLUMA section 26(1)(a) indicates that an adopted and approved land use scheme has the force of law and all landowners within the municipal area are bound by the scheme and its provisions. It also provides for land use and developmental rights in section 26(1)(c) of SPLUMA, which is also required in terms of the scheme register contemplated in Section 25 (2)(c) of SPLUMA as well as Section 31 (1).

The Land Use Management Scheme (LUMS) document was divided into three parts. The first part addressed the legal stance and foundation of the LUS, which included regulation, policies and law for the administration of land and the management thereof. This included the definitions and land use and control sections. The definitions for the scheme included general definitions and land use related definitions, which were relevant to the scheme and the understanding and capturing of land use activities, land use purposes. The definitions were a combination and integration of the original and current three schemes, other land use related documents from different government departments and institutions as well as a comparison with other schemes and contextual considerations. The land use and control section established building control and general development regulations for properties within the municipal area, which included requirements for site development plans, coverage and height, storm water and drainage, and general conditions for erven.

The second part of the LUS was related to planning the environment, which involved the hierarchical categorisation of the land cover and land use in the municipal area. It included the hierarchical categorisation of land uses, the zoning tables as well as the zoning matrix.

Firstly, the land use hierarchy was explained with the four levels of categorization within the scheme. The first level of categorisation was the broadest grouping of the categories and the fourth level the more concentrated categorization related to certain activities of the land use category. The second level of categorisation resembled the categorisation as directed by SPLUMA as well as additional categories. The third level of categorisation differentiated between purposes of activities within the second level of categorisation.

Table 34: Land use categorisation hierarchy

LEVEL I	LEVEL II	LEVEL III	LEVEL IV
URBAN AREA	BUSINESS	BUSINESS 1 (HIGH INTENSITY CBD) BUSINESS 2 (LOW INTENSITY CBD) BUSINESS 3 (OFFICES) BUSINESS 4 (MIXED USE/SUBURBS)	SEE TABLES
(MALELANE; HECTORSPRUIT; KOMATIPOORT; KAAPMUIDEN; KAMAQHEKEZA; TONGA; KAMHLUSHWA)	COMMERCIAL COMMUNITY EDUCATION GOVERNMENT INDUSTRIAL (ALSO BUFFER)	INDUSTRIAL 1 (GENERAL) INDUSTRIAL 2 (LIGHT) INDUSTRIAL 3 (HEAVY) INDUSTRIAL 4 (MINING)	
	INSTITUTIONAL MINING (ALSO INDUSTRIAL 4) PUBLIC	PUBLIC 1 (PUBLIC OPEN SPACE) PUBLIC 2 (PRIVATE OPEN SPACE) PUBLIC 3 (NATURE RESERVE)	
	RECREATIONAL RESIDENTIAL	RECREATIONAL RESIDENTIAL 1 (LOW DENSITY) RESIDENTIAL 2 (MEDIUM DENSITY) RESIDENTIAL 3 (HIGH DENSITY) RESIDENTIAL 4 (RURAL RESIDENTIAL) RESIDENTIAL 5 (SPECIAL RESIDENTIAL)	
	TRANSPORT	TRANSPORT 1 (PUBLIC STREETS OR ROADS AND PARKING) TRANSPORT 2 (TRANSPORT FACILITIES) TRANSPORT 3 (PRIVATE ROADS AND PARKING)	
	SPECIAL SEZ TOURISM UTILITIES MIXED USE	SPECIAL SEZ TOURISM (ALSO BUFFER AND AGRICULTURAL) UTILITIES (SERVICES FOR INFRASTRUCTURE) MIXED USE	
AGRICULTURAL AREAS	AGRICULTURE GAME FARMS PLANTATIONS RESIDENTIAL TOURISM LEBOMBO BORDER	AGRICULTURAL AND RESIDENTIAL 4 (RURAL RESIDENTIAL) TOURISM (ALSO URBAN AND BUFFER) LEBOMBO BORDER	
BUFFER AREAS	CONSERVATION AREA PARKS OPEN SPACES INDUSTRIAL (ALSO URBAN) RESIDENTIAL TOURISM	RESIDENTIAL 4 (RURAL RESIDENTIAL) AND RESIDENTIAL 5 (SPECIAL RESIDENTIAL) TOURISM (ALSO URBAN AND AGRICULTURAL AREAS)	
TRADITIONAL AREAS			
(Mabidozini, Sam ora Park, Emacambeni, Mbangwane; Ekusulukeni, Khombaso; Tsambokhulu; Mananga; Masibekela; Mandulo; Mthatha, New Village, and Hlahlela)	Mlambo Tribal Authority		
(Hhoyi, Eric'sville and Goba)	Hhoyi Tribal Authority		
(Part of kaMaqhekeza; Block A (KwaZibukwane); Block B (KwaSibhejane); Block C (Esibayeni); Tonga and Los My Cherry)	Siboshwa Tribal Authority		
Mangweni and Steenbok	Kwa-Lugedlane Tribal Authority		
Magudu; Mgobodzi; Madadeni; Sibange; Phakama.	Mawewe Tribal Authority		
(Jeppes Reef; Schoemansdal; Buffelspruit; Driekoppies; Middleplaas; Schultzendal; Mzinti; Ntunda; Phiva; Mladla; Phosaville; Langeloo; Ekuphum uleni; Sikhwahlane)	Matsamo Tribal Authority		
(Magogeni; Boschfontein; Skoonplaas)	Mhlaba Tribal Authority		
(Louleville; Shiyalongo, Sincobile)	Lomshiyo Tribal Authority		

Secondly, the second part of the LUMS consists of tables according to the possible different zoning categories in the municipal area. The tables are designed to indicate the zoning, the purpose of the zoning, the objective of the zoning, the primary use with permitted uses, the consent uses and non-permitted uses. It also includes the density, minimum erf sizes, height, coverage, floor-area-ratio, building lines and parking – where applicable. Furthermore, it indicates the related colour code of the zoning in RGB. And lastly it contains a section for additional controls and regulation for general and certain areas in the municipal areas.

Table 35: Example of Agricultural zoning and its related aspects that includes additional controls within the scheme

LAND USE CATEGORY: AGRICULTURE								
ZONING: AGRICULTURE ZONE					PURPOSE: AGRICULTURE			
OBJECTIVE:					PRIMARY USE DEFINITION			
- To provide for the use of land for the purposes of agricultural production. - Protect the natural resource base and ensure sustainable agricultural activities by controlling activities and land use on agricultural zoned land. - Provide for the development of agricultural land by allowing buildings and activities subservient and complementary to the agricultural purposes.					Agriculture: Means practices normally or otherwise reasonably associated with the use of agricultural land for crop and rangeland production, animal production including wild animals, forestry and logging, fishing and aquaculture, including the use of land for structures, buildings and dwelling units reasonably necessary for, or related to, the agricultural use of land. Agriculture also means the science, art, practice or occupation concerned wit the active production of useful plants, fungi or animals for - food, fibre, bio-fuel, or other products with the primary purpose to sustain and enhance human life, and varying degrees the preparation and marketing of the resulting products (source: Preservation and development of agricultural land bill 2017, DAFF).			
PRIMARY USE	PRIMARY USE INCLUDES THE FOLLOWING USES				CONSENT USE (SECONDARY)	TERTIARY USE		NOT PERMITTED
Agriculture	Agricultural Buildings Agriculturail Purposes Animal Refuge Dwelling House Dwelling Unit Nursery				Additional Dwelling Unit Agricultural Industry Airfield Bed and Breakfast Conference Facility Crèche Farm Stall Government Purposes Guest House Heliport Home Business/ Home Enterprise Landfill Lodge Medical Consulting Rooms Municipal Purposes Place of Education Place of Instruction Place of Public Worship Restaurant Shop Social Facility Tavern Telecommunications and Infrastructure Veterinary Clinic or Animal Hospital	Agro-Processing Auction Centre/ Yard Camping ground or site/ Caravan Park Club Hotel Mobile Dwelling units Motor Vehicle Sales market/ Dealership Nature Reserve Place of Amusement Place of Assembly Place of Leisure Place of Refreshment Private Club Processing of Product Recreational Purposes Social Halls Special Economic Zone Special Use Sport and Recreational Clubs Take-Away Shop/ Business Tourism Toursit Facilities Town Houses Transport Purposes Truck Stop Waste Disposal Site Whole sale trade 4x4 Trail Zoological Garden		
DEVELOPMENT PARAMETERS/REGULATION								
DENSITY	MINIMUM ERF SIZE	HEIGHT (MAXIMUM)	COVERAGE (MAXIMUM)	F.A.R (MAXIMUM)	BUILDING LINES			PARKING
					STREET	REAR	SIDE	
As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	As required by the Local Authority	10	5	5	N/A
COLOUR CODE								
R = 34 ; G = 139 ; B = 34								

AGRICULTURE: ADDITIONAL CONTROLS	
1. Agricultural Land along the N4 in the area of the Lebombo Border Post	Permitted uses as approved by Council for this area may include: Dwelling Houses, Dwelling Units, Place of Instruction, Social Halls, Sports and Recreational Clubs, Places of Refreshment, Shops, Residential Buildings, Informal Trade, Bus/Taxi Termini, Facilities related to rail transport, Use related to the international border post, Tourism related uses, Railway Purposes, Industries (excluding Noxious Industries), Workshops, Commercial uses, Offices related to and subservient to the main uses, and Retail in goods manufactured, Processed or Assembled on the property and Industrial Related Products, Service Stations, Service Industries.
2. Minimum Subdivision of Agricultural or Farm land is 1Ha.	
3. Any new proposed development will be subject to the National Environment Management Act 1998 (NEMA) and Policy and Regulations.	
4. Agricultural land around the Malelane Town – This area refers to all the agricultural land around the urban built-up and environment and largely falls beyond the urban edge.	Permitted uses in this area, subject to the scrutiny of the Municipality include: Dwelling Houses, Guest houses, Place of public worship, Place of instruction, Social halls, Sports and recreational clubs, Medical suites and offices as secondary use. Density: One dwelling house per stand is standard. Minimum township stand size is 600m². No middle to high density developments (i.e. 20 du/ha to 75 du/ha) permitted Only new township establishments with densities not less than 12 dwelling units per hectare permitted– i.e. 600m² The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood New land use applications to be approved only where infrastructure services do permit. Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application. Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services. The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications should comply with the submission requirements promulgated in legislation and this Scheme. All land use management generating development will be subjected to Development Contribution. All development proposals to indicate in detail the need and desirability. The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings. No development on slopes steeper than a gradient of 1:5 or 20% will be permitted. No development impacting on or affecting the natural skyline shall be permitted. Environmental sensitivities should inform the spatial layout pattern in terms of locality, extent and positioning of cluster and space developments.
5. Kruger National Park, High Potential Agricultural Land –and Marloth-Park: The majority portion of this land in this zone is the Kruger National Park. This area is located on the southern border of the Kruger National Park and a large area of land is part of the entire nature conservation park area. The area is surrounded by low density middle income houses and/or dwelling units to the east and west as well as the south. The land use comprises of primarily conservation type of land use.	Permitted uses: Non-permanent tourism related activity uses only. No new development is to be permitted within the nature conservation zone. Density and Subdivision: No subdivision of land permitted. The existing use will prevail. Special conditions: No land use activity not compatible with the nature conservation type of land use permitted. No development is to be permitted on slopes steeper than 1 in 5 gradient and in the 1 in 100 year flood level. All river valleys and ground with slopes equal to or exceeding 1 in 5 should be demarcated as no development areas. No development should be located within 300m of high water mark.
6. Lionspruit and Agricultural land around Marloth Park	The zone is predominantly agricultural in use. Half of the area is a nature conservation area known as the Lionspruit. Permitted Uses: Nature Conservation, Agriculture and erection and or use of building for the purposes subservient to the main use. Density and subdivision: No subdivision of land to portion less than 1,5 ha permitted. The existing use will prevail. Special Conditions: No land use activity not compatible with the nature conservation type of land use permitted. No development is to be permitted on slopes steeper than 1 in 5 gradient and in the 1 in 100 year flood level. New land use applications to be approved only where infrastructure services do permit. Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

AGRICULTURE: ADDITIONAL CONTROLS

7. Pholane Township and Agricultural land to the west of the town Komatipoort

The area lies between the railway lines to the north east of the Komatipoort CBD. This is the only part of town where government subsidized housing opportunities, in a form of low density housing, are located within relatively easy walking distance. The area is subject to land invasion. The area is earmarked for future residential development.

Permitted uses: Dwelling Houses, Place of public worship, Place of instruction, Social halls, Sports and recreational clubs, Places of refreshment, Shops, Dwelling units, Residential buildings, Informal trade.

Density and subdivision: One dwelling house per stand. Minimum township stand size - 300m². Minimum subdivision of farm land stand – 1ha

Special Conditions: Only new township establishments with densities not less than 20 dwelling units per hectare permitted

The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood

New land use applications to be approved only where infrastructure services do permit.

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township.

All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services.

The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality.

All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure

The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications

should comply with the submission requirements promulgated in legislation and the applicable Zoning Scheme. The accurate use of zoning categories will inform the municipal rating system.

All land use management generating development will be subjected to the Development Contribution.

All development proposals to indicate in detail the need and desirability.

The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings.

8. Agricultural Land and Lebombo Border Post – Komatipoort

This area is bounded by Nkomati River and Railway lines to the north and is characterised by land uses related tourism and rail and road public transport. It is located directly adjacent to the N4 National Road.

Permitted Uses: ☐ Dwelling Houses, Dwelling units, Place of instruction, Social halls, Sports and recreational clubs, Places of refreshment, Shops, Residential buildings, Informal trade, Bus/Taxi Termini, Facilities related to rail transport, Use related to the international border post, Tourism related uses, Railway purposes, Industries, (excluding noxious industries), Workshops, Commercial uses, offices related to and subservient to the main uses, and Retail in goods manufactured, processed or assembled on the property and industrial related products, Service stations, Service industries.

Density and Subdivision: ☐ Dwelling units and Residential buildings with a density of more than 20 dwelling units per hectare.

Minimum density - 20du/ha - 300m² ☐ Maximum density is 75du/ha – 80m² ☐ Minimum subdivision of farm land – 1ha

Special Conditions: ☐ Only new township establishments with densities not less than 20 dwelling units per hectare permitted.

The scale and design of the development must not be disruptive to the sense of place of an area or neighbourhood.

New land use applications to be approved only where infrastructure services do permit.

All environmental management legislation applicable to the issuing of a Record of Decision shall apply to the application.

Deviation permitted on special merits, e.g. servitudes, roads, rivers, services, physically serving the land or township.

All development to comply with the Nkomazi Municipality's required standards and levels of infrastructure services.

The provision of infrastructure services shall be constructed to the satisfaction of the Nkomazi Municipality.

All development to comply with the Nkomazi Development Contribution levies applicable to the upgrade or provision of Bulk and link infrastructure

The proposed zoning of any stand or land referred to in the application should accurately reflect the intention of the proposed land use. Applications

should comply with the submission requirements promulgated in legislation and the applicable Zoning Scheme. The accurate use of zoning categories will inform the municipal rating system.

All land use management generating development will be subjected to the Development Contribution.

All development proposals to indicate in detail the need and desirability.

The applicant / developer is required to inform all the affected communities by means of advertisements in the press and public meetings.

Table 36: Example of Business 1 zoning and its related aspects that include additional controls within the scheme

LAND USE CATEGORY: BUSINESS				
ZONING: BUSINESS ZONE 1		PURPOSE: HIGH INTENSITY BUSINESS (CBD)		
OBJECTIVE:		PRIMARY USE DEFINITION		
- Accommodate the use of retail, services and commercial land uses in a compatible characterised area. - Spatial development and sustaining the land use of a compact area or node, commonly associated with the Central Business District (CBD) of a town. - Provide and control land use for light manufacturing, storage and other compatible land uses which may benefit or positively contribute to the economies of scale for the area.		General Business: means purposes generally or otherwise reasonably associated with the use of land for business activities, including shops, offices, showrooms, restaurants or similar businesses other than places of instruction, public garages, builder's yards, scrap yards and industrial activities;		
PRIMARY USE	PRIMARY USE INCLUDES THE FOLLOWING USES	CONSENT USE (SECONDARY)	TERTIARY USE	NOT PERMITTED
General Business	Art Gallery Bar Boarding House Business Purposes Confectionery Club Dry Cleaners Funeral Parlour Government Purposes Guest House Health and Beauty Clinic Hospital Hotel Industrial Light Informal Trade Launderette/ Laundry Liquor Store Market Medical Suites/Consulting rooms Motor Vehicle Sales Market/ Dealership Municipal Purposes Office use Public or Private Parking Area Place of Entertainment Place of Instruction Place of Public Worship Place of Refreshment Public and Private Open Space Residential Buildings Restaurants Shops Showroom/ Display Area Social Hall Take Away Shop/ Business Wholesale Trade	Car Wash Clinic Creche Dwelling House Dwelling Unit Garden Service Business Motor Workshop Mortuary Nursery Service Industry Sport and Recreational Grounds Telecommunications and Infrastructure Transport Depot Transport Stops Warehouse Workshop	Auction Centre/ Yard Canteen Educational Purposes Filling Station/ Public Garage/ Fuelling Station Institutional Purposes Place of Amusement Place of Education Resort Special Use Taxi Facility Taxi Rank Traffic Facility Transport Facility Transport Purposes	Agro-Purposes Airport Builders Yard Camping Ground or Cite/ Caravan Park Cemetery Correctional Facility/ Prison Crematorium Industrial Development Zone Industrial Extractive Industrial Noxious Landfill Mining Purposes Mobile Dwelling Units/ Caravan Noxious Industrial Use Recycling Centre Refuse disposal Scrap Yard Waste Disposal Site

R=255 G=0; B=0

Thirdly, the Zoning Matrix tabularises the different zoning areas for the different land use activities, which are defined in the definitions in Part I of the LUMS. The matrix also indicates what activities or land uses are primary, consensual and non-permitted uses in the different zoning areas.

Table 37: Zoning matrix that tables the zoning with the different land use activities

	AGRICULTURE	BUSINESS 1	BUSINESS 2	BUSINESS 3	COMMERCIAL	COMMUNITY	CONSERVATION	EDUCATIONAL	GOVERNMENT	INDUSTRIAL 1	INDUSTRIAL 2	INDUSTRIAL 3	INSTITUTIONAL	MINING	PUBLIC 1	PUBLIC 2	PUBLIC 3	RECREATIONAL	RESIDENTIAL 1	RESIDENTIAL 2	RESIDENTIAL 3	RESIDENTIAL 4	RESIDENTIAL 5	TRANSPORT 1	TRANSPORT 2	TRANSPORT 3	SPECIAL	SEZ	TOURISM	UTILITIES	LEBOMBO BORDER	MIXED USE	
TABLE: LAND USE DEFINITIONS																																	
AGRICULTURAL BUILDING	•				•				■	■	•			0									▲	▲							■	•	
AGRICULTURAL PURPOSE	•		0		•	0	0		■	■	■		■		■	■						•	▲				▲				■	•	•
AGRO-PROCESSING	▲	0								•	•	•										▲									▲		
AIRFIELD	■			0	■	■			■									■															
AIRPORT		0	0	▲	0		0	0		■				0	0	0	0	0		0	0	0	▲	0			•	•		■	■		
ANIMAL REFUGE	•						•							•									■										
ARTS AND CRAFTS WORKSHOP											•																						
ART GALLERY		•	•	•	•			•						•																	•		
AUCTION CENTRE/YARD	▲	▲	0		■	•				•	■	■																					
BAKERY/CONFECTIONARY		•	•							•																							
BAR		•	•	•																													
BED AND BREAKFAST	■	•	•	■	■	■													■	■	▲	■	■								•	•	•
BOARDING HOUSE		•	•	▲		▲		•	0	0	0	0	■	0	0	0	0	■	0	▲	•	■	■								•		
BOTANICAL GARDEN										•						•	•	•														•	
BUILDERS YARD		0	0	0	■	0	0	0	0	•	•	0	•	0	•	0	0	0	0	0	0	0		0						■			
BUSINESS PURPOSES		•	•	•	■					■	■			•					▲	▲	▲							▲	■	▲		•	•
BUS BAYS						•																			▲	•	■			■		•	
BUS TERMINI						•																		■	•	■		■				•	•
CAMPING GROUND OR SITE/CARAVAN PARK	▲	0	0						■		0	0	0	0	▲	▲	■	▲	0	0	0		•								•		
CANTEEN		▲	▲	▲				▲	▲	▲	▲	▲	▲						▲	0	0	0								▲			
CAR WASH		■				0	0	0	0	•	■	0	0						0	0	0								▲				
CHARITY/NON-PROFIT ORGANISATION						•							•																				
CEMETERY		0	0	0	0	0	0	0	•	■		■	0	0	▲	▲		0	0	0		0											
CLINIC		■	■	■	■	•	▲	▲		■	■	■	■	•					▲	▲	▲	▲											
CLUB	▲	•					▲								•	•														▲			
COMMERCIAL PURPOSES						•				•	•	•																				•	•
COMMUNITY PURPOSES				■		•			•						•	•	■	■								■			▲	•	■	•	•
CONFERENCE CENTRE	■		■			•									■	■	■	•				■								▲	•	■	
CONSERVANCY							•				•				•	•	•					▲	•										
CONSERVATION PURPOSES							•		•						•	•	•					•	•					▲		•			
CONVENTION CENTRE						•				■		0	▲		▲	▲	■	•	0	▲											•		
CORRECTIONAL FACILITIES/PRISON		0	0	0	0	0	0	0	•	0	0	0	•	0	0	0	0	0	0	0	0	0								0		■	
CRÈCHE	■	■	•	■	■	•	•	•	•	0	0	0	•						■	■	■	■	■										•
CREMATORIUM		0	0		0	0	0					■	■	0	▲	▲			0	0	0	0		0									
CULTURAL ACTIVITIES						•	•		■						•	•															■		
CULTURAL HERITAGE SITE						•	•								•	•															•		
DISTRIBUTION CENTRE						•			0	▲	▲																						
DRY CLEANERS		•	•	•		0	0	0		■								0															•
DWELLING HOUSE	•	■	■	•	■	▲		■	■		▲		■		■	■	■	▲	•	•	•	•	•	•						•	•	•	
DWELLING UNIT	•	■	■	•	■	■	•	•	0	0	0	■	■	■	■	■	■		■	•	•	▲	•			•			▲		•	•	
EDUCATIONAL PURPOSES	▲	■	▲	■		■	•	•				•						■		▲	▲							▲	■		•		
FARM STALL	■																													■			
FAST FOOD OUTLET		•	•					0				0																					
FILLING STATION/PUBLIC GARAGE/ FUELLING STATION		▲	▲	▲	•	0	0	0	0	•	•	•	0	■	0	0	0	▲	0	0	0	▲							■	%	■		
FLEA MARKET						■		■	•	0	0	0			▲	▲		■													\$		
FREE PORT																																	
FREE TRADE ZONE																																	
FUNERAL PARLOUR		•	•		▲	■	0	0	•	•	•	■	▲	0					0	0	0			0									
GARDEN SERVICE BUSINESS		■				■				•									▲	■	■												
GOVERNMENT PURPOSES	■	•	•	•			0		•	•	•	•	▲												•	•		▲	▲		•	•	•
GUEST HOUSE	■	•	■	■	■	■							■							■	■	•	■	■						•	•	•	
HEALTH AND BEAUTY CLINIC		•	•	•		•		0	0	0	0	■	■	■	■	■		•		▲	▲	■	■							•	•	•	
HELIPORT	■					■													■						•	•		■					
HOME BUSINESS/ HOME ENTERPRISE	■		•																▲	▲	■	■	■									■	
HOSPITAL		•	▲	▲		■		■					•		▲	▲															•		■
HOTEL	▲	•	▲	▲	▲	▲		0	■	0	0	M	■	▲	0	▲	▲				▲	•	■	■							•		■
INDUSTRIAL DEVELOPMENT ZONE		0	0	0			0	0	▲	•	▲	▲	▲	▲		0	0	0	0	0	0	0	0	0	0				▲	•	0		
INDUSTRIAL PURPOSES					0	0	0		▲	•	•	▲	▲	▲	•	0	0	0	0	0	0	0	0	0	0				▲	•	0		%
INDUSTRY - EXTRACTIVE		0	0	0			0		▲	0	0	0	▲	•	0	0	0	0	0	0	0	0	0	0	0					▲	0		

	AGRICULTURE	BUSINESS 1	BUSINESS 2	BUSINESS 3	COMMERCIAL	COMMUNITY	CONSERVATION	EDUCATIONAL	GOVERNMENT	INDUSTRIAL 1	INDUSTRIAL 2	INDUSTRIAL 3	INSTITUTIONAL	MINING	PUBLIC 1	PUBLIC 2	PUBLIC 3	RECREATIONAL	RESIDENTIAL 1	RESIDENTIAL 2	RESIDENTIAL 3	RESIDENTIAL 4	RESIDENTIAL 5	TRANSPORT 1	TRANSPORT 2	TRANSPORT 3	SPECIAL	SEZ	TOURISM	UTILITIES	LEBOMBO BORDER	MIXED USE		
TABLE: LAND USE DEFINITIONS																																%		
INDUSTRIAL - LIGHT		●	▲	▲			○		▲	●	●	●	▲	●	○	○	○	○	○	○	○	○	○	○					●	○				
INDUSTRIAL - NOXIOUS	▲	○	○	○	■	○	○		▲	○	○	●	▲	●	○	○	○	○	○	○	○	○	○	○					■	○	■	○		
INDUSTRY									▲	●	●	●	▲		○	○	○	○	○	○	○	○	○	○					●	○			●	
INFORMAL TRADE		●																						■	■	■								
INSTITUTIONAL PUROPOSES		▲	■	▲	●	■		●	●	■			●	○				■	▲	▲	▲	▲	■				▲	■	▲		●	%		
LABORATORY					●						●	●																▲						
LANDFILL	■	○	○	○	○	○	○	○	■	■				○	○	○	○	○	○	○	○	▲	○								●			
LAUNDERETTE/LAUNDRY		●	●	●		○	○	○	●	●	●							○			●												●	
LIQUOR STORE		●	■	■	●																											■		
LODGE	■			▲			■							○					▲	■	●	■	■							●		●		
MARKET		●	■							●	●																			■				
MANUFACTURING										●	●	●							○														●	
MEDICAL CONSULTING ROOMS/SUITES	■	●	●	●	●		○	○	●	●	●		●	▲				■	■	▲	▲	▲	▲					▲	■	○		●	●	
MINING PURPOSES		○	○	○				○	○	○	○	▲	●	○	○	○	○	○	■	■	▲	▲	▲					▲	■	○				
MOBILE DWELLING UNIT/CARAVAN	▲	○	○	○					■				■					▲	▲	▲			●						▲	▲		■		
MOTOR VEHICLE SALES																																		
MARKET/DEALERSHIP	▲	●	●	●	●	○		○		●	●	●	○	○	○	○	○	○	○	○	○	○										■		
MOTOR WORKSHOP		■	▲	▲	▲	○	○	○	●	●	●				○	○		○	○	○	○	○										■		
MORTUARY		■			○	○	○		●	●					○	○	○	○	○	○	○	○		○										
MUNICIPAL PURPOSES	■	●	●	●		■	○	○	●	●	●	▲												●	●		▲			●	●	●		
MUSEUM			●			●	●	●	○	○	○	○						●	■	▲										●		■		
NATURE RESERVE	▲					●	○	○	○	○	○	■	○	○	○	○	○	■					▲						■					
NOXIOUS INDUSTRIAL USE	▲	○	○	○	■	○	○		▲	○	○	▲	●	○	○	○	○	○	○	○	○	○	○	○	○	○	○	○	■	○	■	○		
NURSERY	●	■	●			○			●			○	■		■	■		○	▲	▲			■	■								■		
OFFICE USE		●	●	●	■				●	●	●	●	▲					●	▲	▲	▲								▲	▲		●	●	
PANELBEATING					●		○	○	○	○	○							○	○	○	○													
PARK /GARDENS							●		●						●	●	●	●												●			●	
PARKING AREA/GARAGE		●	●	●	●				▲			■	▲	▲	▲	▲		▲	▲	▲	●			●	●	●	▲	●		●	●	●		
PET GROOMING PARLOUR																																		
PLACE OF AMUSEMENT	▲	▲	▲	▲	▲	▲			▲				▲	○	■	■		●												▲			●	
PLACE OF ASSEMBLY	▲					●			●				○	○	■	■		●				■										■		
PLACE OF EDUCATION	■	▲	■	▲		●		●	■		○							■	▲		▲	▲	■						■			●		
PLACE OF ENTERTAINMENT		●	■	▲			■	○	▲	■			○	○	○	○		○	○	○		○	○	○	○	○	○			●		■		
PLACE OF INSTRUCTION	■	■	■	▲	■	●		●	■		○	●		▲	▲	▲		■	▲	▲	▲	▲	■						■	■		●	●	
PLACE OF LEISURE	▲								▲				▲	○				●												▲		■		
PLACE OF PUBLIC WORSHIP	■	●	■	●		■	○	●	▲	■			○	○	▲	▲		■	■	▲	■	▲	■						■	■		▲	●	
PLACE OF REFRESHMENT	▲	●	●	●	■	■						■			■	■		▲	■			▲			▲	▲	▲	▲	▲	▲		●	●	
PLAYGROUND						▲						▲					●	●	▲										■			●		
PRIVATE CLUB	▲				●										■	■																	●	
PROCESSING OF PRODUCT	▲					■			●	●	●		●						▲													●		
PUBLIC CONVENIENCES									●						●	●											▲					●		
PUBLIC OR PRIVATE OPEN SPACE		●	●	■			■		●	●	●		●		●	●	●	●	■	■	●	●								■			●	
PUBLIC PURPOSES						●			●				●		●	●	●							●	■		▲					●		
TRANSPORT DEPOT		■			●				■	●	●	▲		○	○									●	●	▲		▲				●		
TRANSPORT STOPS		■			●				●	●															●	▲		▲	■			●		
RAILWAY STATION									▲																●	▲		■				●		
RECREATION PURPOSES	▲					●		●	■				●		●	●	■	●	■	▲	■	■	■			●	▲	■	■			■		
RECYCLING CENTRE		○	○	○	○	○	○	○	■		●	●	○	■	○	○	○	○	○	○	○	○	○	○					▲					
REFUSE DISPOSAL		○	○	○		○	○	○	○	■	■	■	○	○	○	○	○	○	○	○	○	○	○	○					▲			●		
RESERVOIR									●																							●		
RESIDENTIAL BUILDINGS	▲	●	●	●	▲	▲		■		○	○		▲	■					●	●	●	●	●						▲	▲		●	●	
RESIDENTIAL PURPOSES	▲							■											●	●	●	●	●				▲		▲		●			
RESORT	▲	▲												○																●		■		
REST ROOMS															●	●								●	●	▲		▲				●		
RESTAURANT	■	●	●	■	■	■		○	■			○		■	■	■		▲	■	▲	■	■	■							▲			●	●
RETAIL SHOP/TRADE					●							●																					●	
RETIREMENT CENTRE					○	▲		▲		○	○	○	●	○	▲	▲			●	▲	■	■	■											
SANATORIUM							○						●																					
SECTOR DEVELOPMENT ZONE							○			▲	▲	▲			○	○	○	○	○	○	○	○	○						●					
SCRAPYARD		○	○	○	●	○	○	○	○	○	○	○	○		○	○	○	○	○	○	○	○	▲	○					▲	○				
SERVICE INDUSTRY		●	●	●	●					●	●	●						○	■	■	■	■	■						■				●	●

	AGRICULTURE	BUSINESS 1	BUSINESS 2	BUSINESS 3	COMMERCIAL	COMMUNITY	CONSERVATION	EDUCATIONAL	GOVERNMENT	INDUSTRIAL 1	INDUSTRIAL 2	INDUSTRIAL 3	INSTITUTIONAL	MINING	PUBLIC 1	PUBLIC 2	PUBLIC 3	RECREATIONAL	RESIDENTIAL 1	RESIDENTIAL 2	RESIDENTIAL 3	RESIDENTIAL 4	RESIDENTIAL 5	TRANSPORT 1	TRANSPORT 2	TRANSPORT 3	SPECIAL	SEZ	TOURISM	UTILITIES	LEBOMBO BORDER	MIXED USE			
TABLE: LAND USE DEFINITIONS																																			
SEWER PURIFICATION PLANT			Ø				Ø	Ø	•					Ø	Ø	Ø	Ø		Ø	Ø	Ø	Ø	Ø						▲	Ø	•				
SHOP	■	•	•	•	■				Ø	■			■						▲	▲	▲					▲					▲		•	•	
SHOWROOM/DISPLAY AREA		•			■	•				•	•																								
SOCIAL FACILITY	■				■		•			•			•		•	•			■	■	▲	■	▲	•							■		•		
SOCIAL HALL	▲	•	▲	▲	•	•		•	•				•		•	•	■		■	■	▲	▲	▲	■							■		•	•	
SPAZA OR HOUSE SHOP																			▲	▲															
SPECIAL ECONOMIC ZONE (SEZ)	▲													▲																•					
SPECIAL USE	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	▲	•		▲	▲	▲	▲	
SPORT AND RECREATION CLUBS/GROUNDS	▲	■		■	■	•		•	•	Ø	Ø	Ø	Ø	Ø	•	•	■		•	■	▲	■	■	■						▲	■		■	%	
STORAGE				Ø						•	■	•	Ø						Ø	Ø	▲					•				▲					
TAKE-AWAY SHOP/BUSINESS	▲	•	•																											▲					
TAVERN	■																																		
TELECOMMUNICATIONS AND INFRASTRUCTURE	■	■	■	■	■	▲	■	■	■	■	■	■	■	■	■	■			■	■	■	■	■	■						■	▲				
TOURIST ACCOMMODATION	■			▲																											•		•		
TOURISM	▲			▲		■																									•		•		
TOURIST FACILITIES	▲			▲		■																									•		•		
TOWN HOUSES	▲					■														■	•	•	•	▲						■	Ø	•	•		
TAXI FACILITY		▲			■																				■	•	■			▲			•	•	
TAXI RANK		▲			■																					•	■			▲			•	•	
TRAFFIC FACILITIES		▲			•																					•	•				■		•		
TRANSPORT FACILITIES	▲	▲			•						•	Ø														•	•			■			•	•	
TRANSPORT PURPOSES (ALSO SERVICES)	▲	▲			•						•	•			Ø	Ø			Ø	Ø	Ø					•	•	▲					•		
TRUCK STOP	▲				•	Ø	Ø	Ø	Ø	•	•	•	Ø	■	Ø	Ø			Ø	Ø	Ø	Ø				■	•			▲			•		
UTILITY							Ø	Ø			•																	▲	▲			•			
VETERINARY CLINIC OR ANIMAL HOSPITAL	■	•	•	•	•	Ø	▲	Ø		•	•		•	Ø	Ø	Ø			▲	▲	▲		■										■		
WAREHOUSE		■	▲	Ø	•	Ø	Ø	Ø	Ø	•	•	•	Ø		Ø	Ø		Ø	Ø	Ø	Ø				•					▲			•	•	
WASTE DISPOSAL SITE	▲	Ø	Ø				Ø	Ø	•		■	■			Ø	Ø	Ø			Ø	Ø	Ø	Ø							▲	Ø	•	■		
WHOLESALE TRADE	▲	•	▲		•																										▲			•	
WOOD YARD																																			
WORKSHOP		■	▲	Ø	•	■	Ø	Ø		•	•	•	Ø						Ø	Ø	Ø	Ø								▲			•	•	
4 X 4 TRAIL	▲														■	■	■	■													■		■		
ZOOLOGICAL GARDEN	▲						■						■		•	•	•											§				▲			

PERMITTED USE IN LAND USE ZONE

% PERMITTED USE IN LAND USE ZONE BY WRITTEN CONSENT FROM MUNICIPAL COUNCIL

§ PERMITTED USE IN LAND USE ZONE BY REZONING APPLICATION TO MUNICIPAL COUNCIL

M PRECLUDED OR NON-PERMITTED USE IN LAND USE ZONE

Source: Nkomazi LUS 2019

The third part of the LUMS is dedicated to the implementation of the land use activities and use, according to the Nkomazi Spatial Planning and Land Use Management By-Law. It includes the categories for applications, the process of the applications, arrangement in terms of applications, certain procedures and procedures for appeal.

It depicts the land use application categories as per the SPLUMA regulations, the process, arrangement for the applications, procedures and appeal according to the Nkomazi Spatial Planning and Land Use Management By-Law 2015.

The Nkomazi Land Use Management Scheme was approved as a draft during the end of April 2017. The advertisements for public comments were published in May 2017 in the local newspaper and the provincial Government Gazette. Copies of the documents were available at the municipality and the municipal satellite offices with a logbook for the submission of comments.

Comments were received from interested and affected parties that entailed meetings and discussions and at times, follow-up meetings and discussions. Certain meetings were held and inputs received from COGTA, Mpumalanga, Land Use Management; COGTA, Mpumalanga, Traditional Affairs; Department of Agriculture, Rural Development and Land Reform; SANRAL; Department of Rural Development and Land Reform, Mpumalanga; Marloth Park Property Owners Association; Mpumalanga Tourism and Parks Agency; Kruger National Park; certain business owners, traditional authorities and other public affected parties.

A layer for the biodiversity areas was included in the land use scheme maps that included: Protected Areas (PAs), Critical Biodiversity Areas (CBAs) and Ecological Support Areas (ESAs).

A separate matrix was also constructed to allow ease of information and orientation to what land uses are compatible with the related areas in terms of the biodiversity composition of that area.

Two meetings were attended as organised by COGTA for the alignment of Land Use Schemes within Mpumalanga in Pretoria and at Chief Albert Luthuli Municipality during 2017. The proposed guidelines and information were taken into consideration and some of the definitions in the Scheme supplemented.

The folders for the previous Mpumalanga's Department of Agriculture, Rural Development and Land Administration's Land Administration Department that relates to

the Nkomazi Municipality were requested in December 2016 from COGTA Mpumalanga, where the folders were stored. The folders were processed by this researcher to assist the department in the processing of the folders to release the previous applications made outside of the urban edge to the Municipality.

4.6 The review of the Municipal Spatial Development Framework

The Department of Rural Development and Land Reform at the time (currently the Department of Agriculture, Land Reform and Rural Development) provided guidelines for the development of a municipal SDF, or a local SDF, as well as all other kinds of SDF's. SPLUMA also required certain content and procedures in the local SDF and of course had to be in line with this.

The review of the SDF formed part of the larger project to implement the Spatial Planning and Land Use Management System within the municipality according to SPLUMA that included the development of the wall-to-wall LUS, the development of the SPLUM by-law, the electronic system to accommodate it all and the facilitation of the MPT. This said, the interviews and information building of the local SDF were done parallel to the information gathering and formulation of the development of the LUS.

The project was done in the form of a joint venture, although early in the process, during the inception of the project, after the first deliverables were completed, the one company disappeared, and the project had to be completed by the researcher's company at that time. A company named TGIS provided resources and training in order to create and develop the needed maps for the review of the SDF and subsequently software programming for the accommodating electronic system.

4.6.1 Introduction

The objective of the review of the Spatial Development Framework (SDF) as a component of the implementation of the SPLUM system project was to create a credible SDF which ensures:

- Compliance with the provisions of the Municipal Systems Act and the Municipal Planning and Performance Management Regulations, 2001;
- Compliance with the provisions of the Spatial Planning and Land Use Management Act, 2013 (SPLUMA) and Regulations;
- Meeting the required standards set by the Provincial Government through the implementation of the Comprehensive SDF Guidelines 2010 (DRDLR).

The objectives of the review of the municipal Spatial Development Framework (SDF) were to ensure that:

- It complied and was in alignment with the provisions of SPLUMA and its regulations;
- It complied with the provisions of the Municipal Systems Act and the Municipal Planning and Performance Management Regulations, 2001;
- That it would be aligned with the standards of the Provincial Government by the implementation of the Comprehensive SDF Guidelines 2010⁴² of the Department of Rural Development and Land Reform.

⁴² At the time the project proposal was written the 2014 SDF guidelines had not been published yet, but the latest version at that point in time (2014) was used instead. See note 41 regarding the department.

4.6.2 The required alignment of legislation and policies

The legislative and policy context, specific to this Category B municipality, is part of the forming framework for the SDF. The review of the local SDF included the following levels of alignment with the related adapted and interpreted visions in the section below.

Legislation and policy that formed and influenced the Municipal SDF related to this project:

National level:

The National level policies and legislation that were aligned for this municipal SDF are:

The Constitution of 1996; the Municipal Systems Act 32 of 2000; the National Heritage Resource Act 25 of 1999; the National Development Plan (NDP) 2030; the Medium Term Strategic Framework (MTSF); New Growth Path; the National Environmental Management Act 107 of 1998; the Conservation of Agricultural Resources Act 43 of 1983; the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA); the Accelerated and Shared Growth initiative for South Africa (Asgi SA); the National Spatial Development Perspective 2006; the Comprehensive Rural Development Programme; the Draft National Transportation Master Plan 2050 (NATMAP)

The national related vision that was aligned relate to the following aspects: Poverty elimination and the reduction of inequality; the diversification of the economy, growth and job creation; the preservation of agricultural land and activities, preserve environment and natural resources and manasustainability; basicsic infrastructure investment; enable food security; promote transport and industrialisation.

Additionally, SPLUMA provides structure for the processes, development and management for spatial planning and land use management.

Provincial level:

The provincial level of alignment for the relevant legislation and policies for the subject municipality included the Mpumalanga Provincial Growth and Development Strategy; the

Mpumalanga Economic Growth and Development Path Draft 2011; the Mpumalanga Provincial Spatial Development Framework 2013; the Mpumalanga Rural Development Strategy 2012; the Mpumalanga Tourism Growth Strategy 2007; the Maputo Development Corridor; the Mpumalanga Spatial Development Framework: the Ehlanzeni Implementation Plan.

The alignment of vision on the related provincial level was developed and stated as follows:

The provincial vision required the creation of a sustainable urban and rural spatial development pattern that focussed on a modern, ecologically sustainable economy, that would be supported by a suitably skilled labour force and provide for an improved quality of life. Focus areas include: reconstruction, development and sustainable growth, employment; economic development, infrastructure development, sustainable environmental development, social development, good Governance; economic growth and employment creation through agriculture and forestry, mining and energy, manufacturing and beneficiation, tourism and cultural industries; more focus on development corridors and nodes; protection of environmental resources; specific job creation; the integration of disadvantaged communities; tenure upgrading and land ownership; infrastructure investment. The specific municipality was also highlighted on a provincial level to focus on agricultural and tourism activities; increased industrial development along N4 road; a mixed use development along N4; and the formalisation of informal settlements.

Regional level

The regional level of alignment for the subject municipality falls within the Ehlanzeni District Municipal Area. The following legislation, policy and vision had to be aligned at that point in time: the Ehlanzeni Spatial Development Framework 2007; the Komati River Basin Development Programme; the Lubombo Transfrontier Conservation Area (LTFCA) and the Resource Area Initiative; the Kruger National Park Management Plan 2006. The strategic objectives and principles for the region included: the integration of urban and rural systems; the focus on investment on areas with greatest economic potential; the

generation of sustainable and integrated settlements; the controlled use of natural environment; the increase in human resources development; increased accessibility; the development of the Tourism and Biodiversity corridor (TBC) and more.

Local Level

The local focus on the Category B municipality was geared through the municipal vision that focused on becoming a leading municipality that empowers its communities through excellent service delivery. This comes with planning. The IDP, the Nkomazi Spatial Planning and Land Use Management By-Law 2015 and other policies that were also mentioned in the Land Use Scheme section, formed part of the framework for the SDF, as well as the developed LUS itself.

All the mentioned policies and legislation were reviewed and locally applied within the development of the review of the subject SDF. The SDF also contain a discussion on each with a local contextual application.

4.6.3 Methodology and project management for the review of the SDF as part of the project

The methodology that was applied in the review of the SDF was supported by an integrated and holistic systems approach, necessary to ensure the long-term sustainability of development of the Category B municipality.

The success (credibility) of an SDF could be regarded as the result of inter alia:

- the degree to which the integration of sector development aspects into the SDF have taken place;
- the level of spatial integration between sector planning actions, projects and programmes;
- the synergy created by the spatial clustering and distribution of activities;
- the level of interaction of the urban and rural areas;
- the internal functioning of nodes and zones;
- to ensure an environment conducive for human and economic development and a sustainable natural environment.

The methodology to review the municipal SDF followed certain generally accepted phases related to the project management formation thereof. The SDF must consist of

the following phases/ or major components as required by the SDF guidelines compiled by the Department of Rural Development and Land Reform (2014), as the Department was termed at that (currently the Department of Agriculture, Land Reform and Rural Development):

- Phase 1: Start-up
- Phase 2: Issues and Vision
- Phase 3: Spatial Analysis and Synthesis
- Phase 4: Draft SDF
- Phase 5: Achieving Support
- Phase 6: Finalising and approval of SDF
- Phase 7: Implementation and monitoring

The project schedule, together with the related milestones and subsequent tasks and activities, was based on the required phases. The implementation of the project was done according to the schedule, whilst it is important to note that at times, the phases could overlap and integrate as the project becomes dynamic and tasks and activities organised and actualised.

Table 38: An excerpt from the project schedule and plan with related milestones and activities for the SDF project phases

Phase	Milestones	Activity description
Phase 1: Inception Phase	Task 1: Client liaison and inception	Clarify brief, process and stakeholders
	Task 2: Project design	Work schedule, resources, GIS and database
Phase 2: Issues and Vision	Task 3: Determining issues and defining the vision	Public participation

Phase 3: Spatial analysis and synthesis	Task 4: Resource data-base	Acquire and update Cadastral data
		Capturing of existing broad land uses.
		Acquire information on historical, human, economic, natural resources base
	Task 5: Economic analysis	Incorporate LED processes
		Determine level and distribution of economic activities
	Task 6: Spatial analysis	Map urban and rural structure
		Determine existing engineering services levels and constraints
		Determine existing Social Infrastructure distribution and levels
	Task 7: Transportation analysis	Determine transportation and road infrastructure patterns and levels
	Task 8: Socio-economic analysis	Determine socio-economic profile and distribution of population
	Task 9: Legislation, policy and initiatives	Analyse existing government policies, legislation and initiatives
	Task 10: Institutional factors	Analyse existing IDPs Spatial Frameworks (district and adjoining municipalities)
		Land ownership/ tenure
		Land claims
		Tribal land
	Task 11: Natural environmental factors	Formulate strategic environmental assessment
	Task 12: Development implications and issues	Synthesis of above aspects. Determine developmental issues
		(SWOT), Gaps,

		Trends and Needs
Phase 4: Draft SDF, Desired Conceptual Goal and Development pattern	Task 13: Spatial Development Objectives	Prioritise Issues and determine spatial development objectives
	Task 14: Strategic Interventions	Strategic Interventions
	Task 15: Conceptual Plan	Conceptual Framework
	Task 16: Spatial Plan	Prepare Spatial Framework
	Task 16: Implementation Plan	Implementation Framework
Phase 5: Achieving support for the Draft SDF	Task 17: Participating	Public consultation
		Stakeholder consultation
Phase 6: Finalisation and Approval of SDF	Task 18: Finalisation of SDP	Consolidation of Comments
		Submission to Steering Committee
		Approval of Municipality
Phase 7:		

Source: Prism Development Group – TRP (2015)

This following section provides a background to the approach that was adopted in the review of the municipal SDF and processes that were applied consisting of interrelated developmental phases.

4.6.3.1 Integrated spatial planning and development approach

The SDF has an integrated and strategic positioning vested within its nature. It forms a core part of planning in its strategic and future vision form. It requires a deep understanding of relevant existing and future processes of developmental planning which incorporates strategic planning, land use management, and operational planning on levels of integrated development planning within the social, economic, political, institutional, legal, technological, physical and natural environments of a Municipality and its surrounding areas. This requires both the vertical and horizontal integration of processes within the planning system.

The review of the municipal SDF had to reflect on the current and potential future economic, natural and human resources, as well as physical infrastructure. Furthermore it should be aligned and endorse the related governmental policies on sustainability that includes aspects such as accessibility, integration, functionality, sustainability and equity, provide efficient and cost effective developments and ultimately enhance the cooperative interaction between the public and private sectors with the aim of creating a vibrant community with a sense of place and quality of living that supports the development of sustainable resources.

4.6.3.2 The Spatial Development Framework

The municipal SDF review was a comprehensive management tool that intended to spatially direct regional and provincial development and furthermore give effect to the land development policies, initiatives and programmes of the National, Provincial and specifically the district and local municipality.

The following general objectives for the review of the municipal SDF was set in order to:

- provide for several layers of strategic planning;
- facilitate an environment supportive of local economic and sustainable development;
- support development planning through project management;
- encourage an environment for human resource development;
- facilitate the context that supports quality of life and sustainable livelihoods;

- cultivate a context that supports sustainable public and private investment; and
- safeguard the natural and heritage resources.

The review of the Municipal SDF used the mentioned objectives to guide problem-solving interventions that could give effect to the development principles in SPLUMA. The information in compiling the SDF focused on achieving the SPLUMA development objectives by considering the distribution of resources and specific spatial distribution patterns for the municipality, which served as part of the outcome of the project.

4.6.3.3 The Development Planning System as part of the underlying foundation of the SDF

The development planning system as part of the underlying foundation of the SDF can be divided into interdependent fundamental subsystems that include planning development, directing development; implementing development; institutionalising development; and maintaining development.

The initial part of the process involves the application of planning and development principles that direct it and the compilation of all the information needed for the Municipal SDF through an integrated development planning process, which involved:

- The alignment of development principles, that included SPLUMA development principles and the IDP directed Key Performance Areas, with consideration of the provincial development strategies;
- The compilation of a strategic spatial development concept involving a mission, strategies and strategic development objectives linked with conceptual plans
- Aligning the SDF with development mechanisms to give realise development strategies within the planning system that enables overarching and integrated planning relating to the mentioned objectives:
 - To enable an environment that enhances quality of life;
 - Enable the functioning of urban and rural development areas that facilitate different uses and densities;
 - Encourage socio-economic development; and
 - Equip investment targets.

The focus of development in terms of functional geographical areas had to consider the following features:

- Areas include various socio- economic development levels, economic development, urban and rural operations or uses, as well as economic operations, social and engineering infrastructure;
- different land tenure and ownership in different areas within one municipal area;
- various kinds of investment;
- certain core focus areas within the municipal area can focus on different development needs, that require different development needs.

The municipal SDF must fundamentally consider the needs of the communities within the municipal area.

The integration of other related planning functions that are directly linked to the planning processes include engineering infrastructure, human settlements, transportation, roads, and more, and form part of the formation of the SDF. The related context is shaped by various local aspects.

4.6.3.4 The Spatial Development Planning Process

The municipal SDF serves as a basic planning tool, as prescribed by SPLUMA, that forms a framework for the future urban and rural development within the municipal area that considers the community's needs and portrays the municipality's strategic vision.

Spatial Planning, that is vested in the SDF, necessitates a holistic approach that relates to the integration of other systems within the municipality to ensure the reflection of the IDP and the municipality's long-term plans and visions in terms of development. The purpose is to facilitate development that considers all social, institutional, physical, infrastructure, economic factors and more. This should be integrated into the SDF to consider all related processes, together with inherent municipal processes that should support economic-, social-, infrastructure-, institutional and environmental development. The development aspects and purposes are indicated below:

Economic Development:

- Economic principles should support spatial planning to enable effective and realistic functioning; Certain aspects are regarded as essential in the formation of the Municipal SDF:

- The economic sector trends and demands that are present in land use demand that enables the strengthening and connectivity of development corridors and economic links; integration of rural and urban economies, as well as addressing accessibility to economic nodes.

Social development:

- Focuses on the establishment of a favourable environment that supports increased human resources and the development of people in order to increase quality of life of communities and individuals. Communities and the people within the municipal area should be enabled to have more choices in being part of and contributing to the social and economic environment in the area.

Infrastructure development

- The provision of the needed bulk infrastructure that enables social and economic development is essential and a central area of focus for the facilitation of development. Sustainable settlements require sufficient electricity and water provision, sanitation, roads and transportation and more. This includes the provision of sufficient social facilities and housing. The roads network and infrastructure that enables transportation, being the central mode of transport in South Africa, plays a fundamental role in accessing economic and social centres and facilities and enables the development of an area.

Environmental management

- The integration of environmental management guidelines and established environmental considerations forms an essential part of the SDF. It enables sustainable settlements that are balanced between social and economic aspects and systems.

Institutional development

- The SDF process should enable capacity within the institutional system partially by aligning the institutional system's related policies and process, although it could also emphasise the existing gaps in institutional development.

4.6.3.5 The integration of the SDF into the IDP process

The SDF as an essential part of the IDP (See Chapter 3 for the legal framework) forms the strategic development planning that aligns inputs and projects, that can be further detailed and focused in a certain area within the municipality in a precinct plan, also integrated with the IDP.

The IDP and the SDF maintain an interrelationship in terms of it's function in which the SDF is purposed to provide a visual presentation of the IDP. The interrelationship is illustrated in the Figure below.

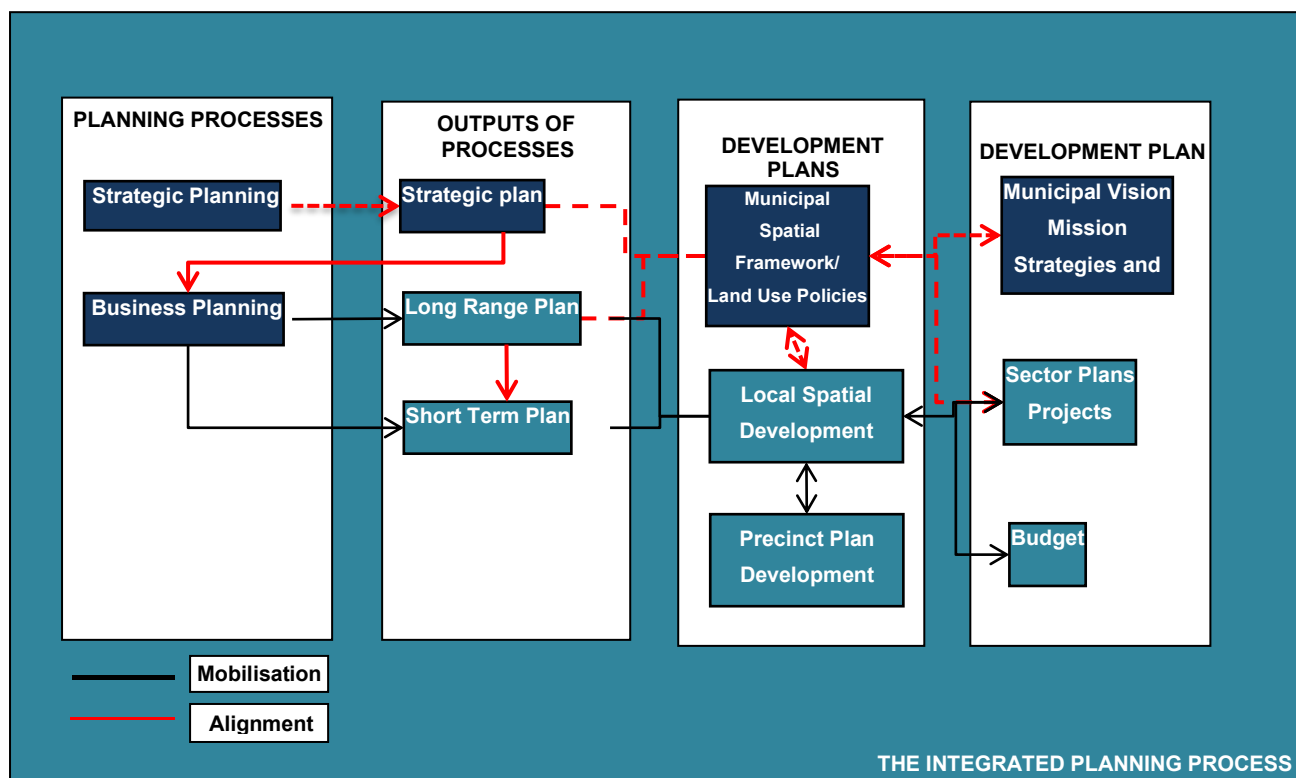


Figure 28: The integrated planning process

(Source: Sisonke Development Planning, 2014)

The municipal SDF is a long-term strategic planning mechanism that should facilitate a better-designed, more efficient, more sustainable and more equitable physical environment. Characteristics of the municipal SDF could be regarded as the following

- Has a long-term developmental focus;
- It should indicate innovation, change and renewal within the municipal area;
- Should be holistic and comprehensive, albeit focused, concise and clear;
- It is a high-level strategic policy;
- It should assist the direction of projects and the indication of possible investments within the municipal areas and budget allocation.

The municipal SDF should facilitate the capital investment framework in steering national, provincial, and municipal programmes, as well as identify areas within the municipality for certain development. programs and projects for the development of land within the municipality. The Nkomazi SDF due to its strategic nature adopts a top-down integrated directive approach and provides a broad guide for investment in accordance with the spatial strategies and priorities. Projects identified in the Nkomazi SDF will therefore be of strategic nature and the spatial co-ordination of investment, projects, programmes and budgets in local sector plans are evaluated at the hand of the Spatial Vision and strategies to ensure alignment. From a developmental perspective the aim and purpose of the Nkomazi SDF is to guide projects towards certain localities where it will add value and create synergy.

4.6.3.6 Integration of development aspects into development plans and programmes

The development outputs as part of the Integrated Planning Processes of the Local Departments are illustrated in the Figure above. The municipal SDF is developed through the integration of the relevant outputs and arrangement of existing Service Level Agreements of different departments, which then enables the budget to be linked to related projects.

- The municipal SDF should be continuously reviewed to respond to the municipal area and its needs and challenges. To build a coherent

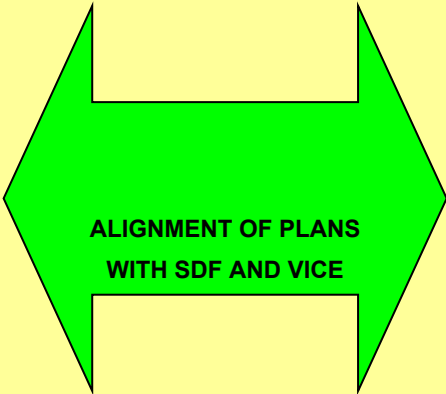
development strategy, it should be aligned with related strategies and policies to link to the required long-term framework and subsequently, inform the IDP and the local municipal LED strategies;

- To align to the more recent national and provincial strategies when applicable, such as the National Spatial Development Framework; the Provincial Growth & Development Strategy; the Western Cape SDF, the West Coast District SDF, the Draft Regional Industrial Development Strategy; South Africa's New Regional Industrial Development Strategy; the National Spatial Development Perspective; SADC Regional Indicative Strategic Development Plan; Draft NEDLAC National Retail Sector Development Strategy 2010; UN-Habitat and DTI Local Economic Development Series; the Green Paper: National Strategic Planning; the National Spatial Development Perspective, National Rural Development Strategy, etc.
- To align it with the longer-term sectoral development plans and their goals
- To identify possible implementable projects from various sources such as the Growth and Development Strategy, current local LEDs and IDPs, etc.
- To create a comprehensive socio-economic and business profile for the municipality
- To enhance competitiveness, increase sustainable growth and ensure that growth is inclusive.
- Incorporate plans of all local sector departments and private sector functions, including environmental planning, business development, infrastructure provision, real estate development and finance, etc.
- To provide precinct plans to ensure integrated local development and to respond to market demands

The Nkomazi Spatial Development Framework should align with the directives and principles relating to:

- Integrating land transport functions with related functions such as land use and economic planning and development through, among others, development of activity corridors and nodes linked with the main growth centres within the area, and densification and infilling.
- Integrating land use, economic planning and development functions with transportation functions to ensure that transport planning will guide land use and development planning.
- Ensuring the integration of employment opportunities into underdeveloped areas.
- The optimum alignment between infrastructure investment and development programmes within localities.

Table 39: Integration of development plans and programmes into Spatial Development Framework

Function	Spatial Aspect relating to:	Planning Inputs/Outputs												
		Rural	Storm water	Electricity	Water	Human	Sport and	Social	Educational	Integrated	Local	Urban	Land Rights	Safety Plan
Engineering Services	Roads													
	Stormwater													
	Electricity													
	Water													
	Sewerage													
Community and Social Infrastructure	Housing													
	Health													
	Sport													
	Recreation													
	Ambulance Services													
	Fire Stations													
	SAPS													
	Creches													
	Schools													
	Tertiary Education													
	Courts													
	Social Grants Payment office													
	Tribal Offices													

	Government Administration	
	Municipal Administration	
	Community Halls	
	Aids Centres	
	Aged Service Centres	
	Home Care	
	Youth Centres	
	ITC Centres	
Public Transport	Modal Interchanges and stops	
	Transportation Routes	
Economic Development	Tourism	
	Mining	
	Agriculture	
	Employment	
	Business Development	
Environmental	Industrial Development	
	Open Spaces	
	Natural Areas	
Land Rights	Flood Areas	
	Tenure	
Urban Planning	Ownership	
	Tribal	
	SDF and Land Policies	
	Land Use Schemes	

Source: Sisonke Development Planners (2014)

4.6.4 Considerations in the review of the municipal SDF

The guidelines for the review of the SDF that were used at the time from the Department of Rural Development and Land Reform (2014), structured a three part specific focus for Local SDF's. The three focus areas included the biophysical sphere, the socio-economic sphere and the built environment.

Table 40: Excerpt of overview of the substantive focus of an SDF particular to local SDF

Municipal SDF (Local)	Biophysical	Socio-Economic	Built Environment
	Critical biodiversity areas (CBA); topography and ridge lines; urban open space systems; farming regions and agricultural land (dry areas as well as irrigated land); protected areas; river corridors; rural landscape and sense of place.	Economic infrastructure; primary economic centres and growth trends; social services; urban-rural migration; economic role of settlements within regional space economy; agricultural activities; rural development.	Cultural heritage; heritage resources; gateways and destinations; role of settlements and their interrelationships; movement routes; activity streets and hubs of activity; public space; future development trends; densities; gateways and destinations; scenic landscapes; scenic routes; movement routes; housing (informal, social, farmworker and more).

Source: SDF guidelines (Department of Rural Development and Land Reform, 2014:22)

The above-mentioned focus areas must be and was included in the municipal SDF for the Category B municipality. Category B municipalities fall within the Local (Urban and Rural) Municipal SDF categorisation for SDFs according to the mentioned department

guidelines. In SPLUMA the SDF categorisation falls within the category for Municipal Spatial Development Frameworks (SPLUMA, 2013:32).

The required content of the municipal SDF was indicated in Section 3.8.1 of this thesis. The content must include all the aspects mentioned in Section 21 (a-p) of SPLUMA that include, but not limited to the following:

- The SDF must be contained in a written document, as well as represented in maps visually;
- The SPLUMA development principles must be actualised in the SDF;
- The SDF must portray the 10-20 year vision of the municipality;
- Include a projection of population growth for the following 5 years;
- The need for housing should be projected and locations identified for potential housing, inclusionary housing as well as other development focus areas;
- Reflect and project the municipal area's employment trends and economic activity for the following 5 years;
- Areas of environmental sensitivity, as well as agricultural land must be indicated;
- The capital expenditure must be spatially interpreted in maps;
- Sectoral policies should also be represented spatially;
- Identify areas for incremental upgrading;
- Engineering infrastructure and services provision should be projected for the following 5 years;
- Implementation plan for budgets and resources.

The Municipal Systems Act 32 of 2000 requires the SDF to spatially represent the IDP as indicated in Section 3.8.2. SPLUMA requires the SDF process to publish the changes to the SDF in the provincial Government Gazette, that allows the public to comment for a period of 60 days before it can be formally adopted by the municipal council.

The content of the municipal SDF required the gathering of information that included desktop studies, interviews with municipal officials, government departments, public entities and representative groups, meetings with traditional authorities and more. A

broad framework for the initiation of the information gathering included the following structure:

Table 41: Spectrum of basic information obtained to build the foundation of the municipal SDF

Needed information by topic and division	
IDP	Issues per ward
	Geographical distribution of projects
	Geographical focus of spending
	MIG Funding
	Short, medium and long-term projects
Housing	Projects
	Houses and distribution of houses built per type over the last 10 years
	Informal Settlements
Land Uses	Deviations from Land Use Scheme
	Growth over 10 years
	Issues
	Projects
Community Facilities	Educational facilities
	Provision of Health facilities
	Provision of Libraries and community halls
	Provision of Fire stations
	Provision of Cemeteries
	Provision of magistrates courts
	Provision of Police stations and satellite stations
	Provision of SASSA
	Provision of labour offices
Engineering infrastructure	
Water:	Water requirements
	Bulk supply infrastructure
	Service storage
	Distribution network
	Projects
	Planning
	Issues
Sewerage:	Bulk supply infrastructure
	Capacity of works and system
	Distribution network
	Projects
	Planning

	Issues
Roads:	Projects
	Planning
Transportation:	Modes and systems
	Interchanges
	Projects
	Planning
	Issues
Waste Management:	Existing dumps and working system
	Capacity of dumps and system
	Future facilities
Disaster Management:	Issues
	Projects

Source: Sisonke Development Planners (2014)

The mentioned information aspects within the table are all identified in their description in relation to their geographical location to become part of the reports written and the compilation and considerations of the municipal SDF.

4.6.5 The municipal SDF maps

The generation of the SDF maps forms a core part of the SDF itself. It is after all the required visual representation of the IDP and its composite decision-making tool, that also applies to land use management decision making considerations. The SDF document itself starts with maps and ends with maps. The maps are at times integrated to form the larger conceptual SDF that indicates all important nodes, routes, and more.

A list of the maps that were included in the development and review of this municipal SDF are as follows, indicated in the Table below:

Table 42: Table: The developed maps included and represented in the municipal SDF document

	Developed SDF topical maps as per document
	Local Spatial Framework:
Regional Setting	Local Spatial Framework:
Wards	Local Spatial Framework:
Energy Efficiency / Electricity Projects	Local Spatial Framework:
Roads and Storm water Infrastructure Projects	Local Spatial Framework:
Water and Sanitation Infrastructure Projects	Local Spatial Framework:
Waste Infrastructure Projects	Local Spatial Framework:
Public Facilities Projects	Local Spatial Framework:
Sport and Recreation Projects	Local Spatial Framework:
Cemetery Projects	Rural Informal Settlements
Human Settlements	Educational Facilities
Regional Spatial Development Initiatives	Hospitals and clinics
Mpumalanga Spatial Development Framework	Community Facilities
Mpumalanga Development Corridors and Nodes	Government Amenities
Ehlanzeni Spatial Development Framework	Stadiums, Sports and Recreation Facilities
Locality	Landfill Sites
Average Annual Rainfall	Fire Stations
Elevation above Sea Level	Cemeteries
Morphology	Bus and Taxi Routes
Geology	Bus and Taxi Routes
Minerals	Bus and Taxi Routes
Soils	Bus and Taxi Routes
Agricultural Soil Potential	Bus and Taxi Routes
Rivers and Dams	Bus Routes
Land Cover	Roads, railway lines and airfields
Vegetation Assessment	Access to piped water in dwelling
Aquatic Assessment	Access to piped water in yard
Biodiversity Assessment	Access to Sanitation (Sewage)
Ecological Corridors	Access to Solid Waste Disposal
Total GVA	Access to Household Electricity
Sectoral Production	Land Ownership
Sectoral production growth	Land Ownership

Tress index	Land Ownership
Location quotient	Land Ownership
Sectoral Formal Employment	Land Ownership
Unemployment rate	Land Ownership
Economic Active Population	Land Ownership
Population size per Sub Place	Land Ownership
Racial distribution per sub-place	Land Ownership
Population Distribution	Land Ownership
Average Annual Income	Land Ownership
Education higher than secondary school	Land Ownership Farms
Settlement Patterns	Approved Land Claims
	Gazetted Land Claims
Potential Hazard Zones	MBSP Terrestrial Guidelines
Form Giving Aspects	MBSP Aquatic Guidelines
Form Giving Aspects	High Potential Soils
Form Giving Aspects	Infrastructure Investment – Meeting the Social Needs of Communities
Form Giving Aspects	Map 4.3-17 Infrastructure Investment – Meeting the Engineering Services Needs of
Strategic Objective 1:	Communities (Water & Sanitation)
Strategic Objective 1:	5 Year Spatial Development Plan 2016-2021
Strategic Objective 1:	5 Year Spatial Development Plan 2016-2021
Spatial Development Concept	5 Year Spatial Development Plan 2016-2021
Malelane Spatial Development Concept	5 Year Spatial Development Plan 2016-2021
Greater Malelane SDF	Integrated Housing
Spatial Development Concept	Integrated Housing
SDF	Integrated Housing
Spatial Development Concept	Housing
Spatial Development Framework	
Spatial Development Framework	
The optimal utilisation of agricultural land based on Land Capability	

Source: Prism Development Group -TRP (2018)

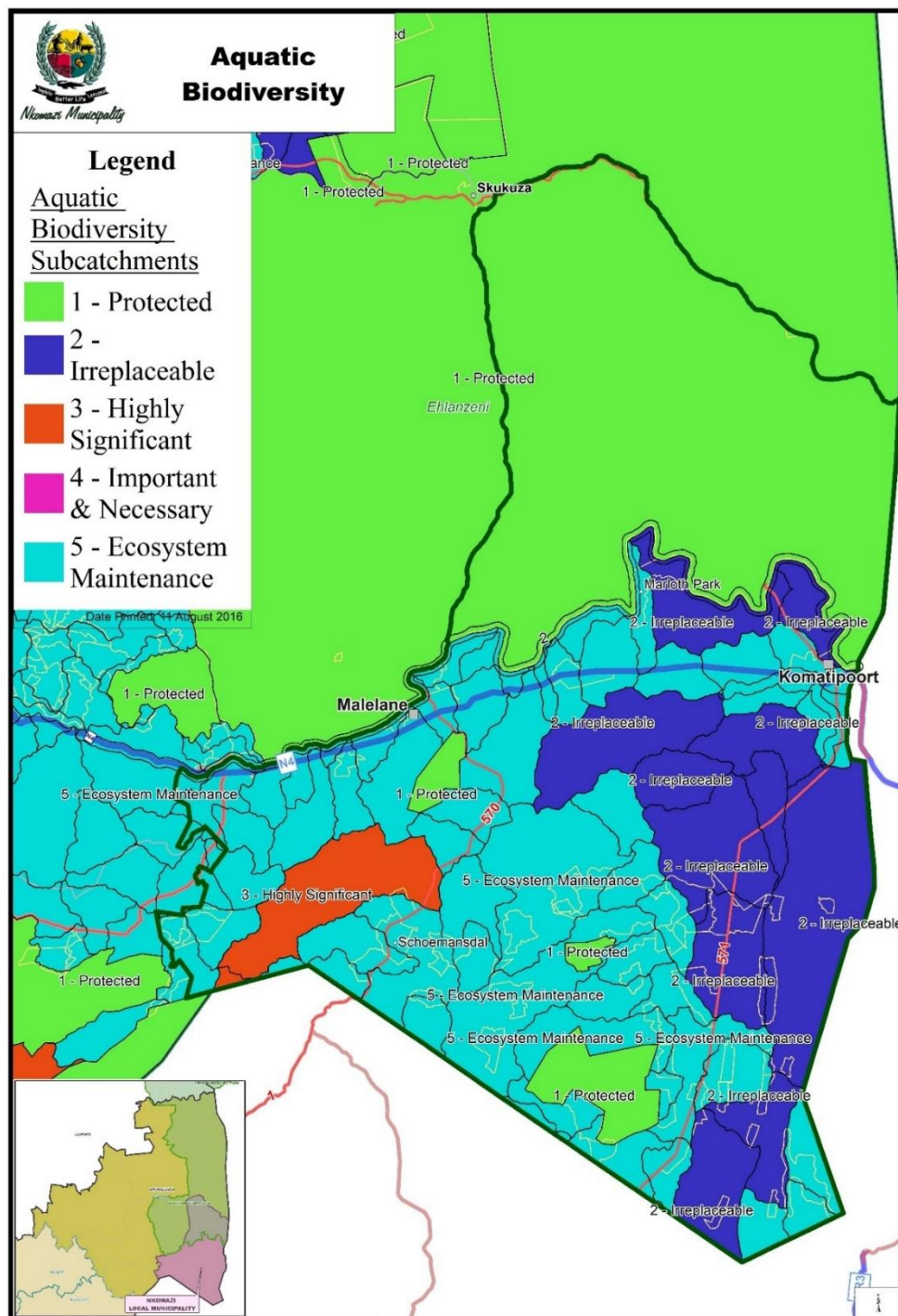


Figure 29: The map as illustration of a typical visual representation of a needed aspect in the SDF: Aquatic biodiversity

Source: Nkomazi SDF 2018

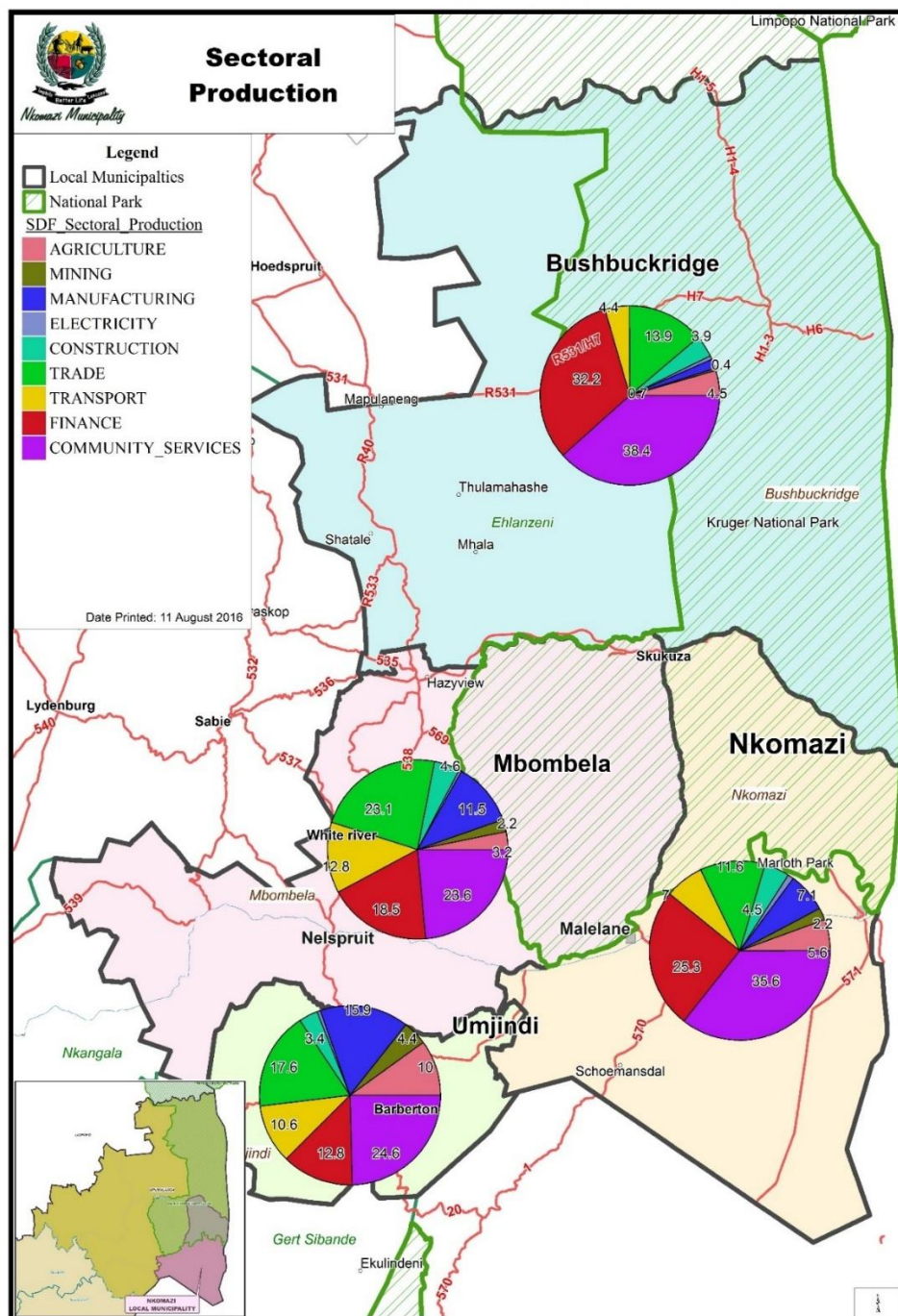


Figure 30: The map as illustration of a typical visual representation of the needed aspect in the SDF: Sectoral production

Source: Nkomazi SDF 2018

The map is a visual representation of the sectoral production in the subject municipality as well as the comparison with the surrounding municipalities. The information was also included in the written form that included the description of a table with the information. See below.

Table 43: Excerpt and example of presented contextual information: Sectoral production (Sector Contribution %) in table form

	AGRICULTURE	MINING	MANUFACTURING	ELECTRICITY	CONSTRUCTION	TRADE	TRANSPORT	FINANCE	COMMUNITY SERVICES	TOTAL INDUSTRIES
NATIONAL TOTAL	2.5 %	9.8 %	12.8 %	2.8 %	3.8 %	15.4 %	9.3 %	21.3 %	22.4 %	100 %
MPUMALANG A	3.2 %	26.4 %	12.2 %	5.9 %	2.9 %	12.2 %	7.5 %	13.1 %	16.6 %	100 %
EHLANZENI DISTRICT MUNICIPALITY	4.2 %	6.0 %	9.4 %	0.6 %	4.2 %	19.5 %	10.5 %	19.6 %	26.0 %	100 %
NKOMAZI	5.6 %	2.2 %	7.1 %	1.1 %	4.5 %	11.6 %	7.0 %	25.3 %	35.6 %	100 %
BUSHBUCKRIDGE	4.5 %	0.4 %	1.7 %	0.7 %	3.9 %	13.9 %	4.4 %	32.2 %	38.4 %	100 %
MBOMBELA	3.2 %	2.2 %	11.5 %	0.5 %	4.6 %	23.1 %	12.8 %	18.5 %	23.6 %	100 %
UMJINDI	10.0 %	4.4 %	15.9 %	0.6 %	3.4 %	17.6 %	10.6 %	12.8 %	24.6 %	100 %

Source: Nkomazi SDF 2018

The SDF conceptual map consisted of the compilation of all the information gathered, all the processes attended to during the project, the outcome of the analysis and implementation of the processes inherent in the SDF. The conceptual map is the final accumulation of the review of the SDF.

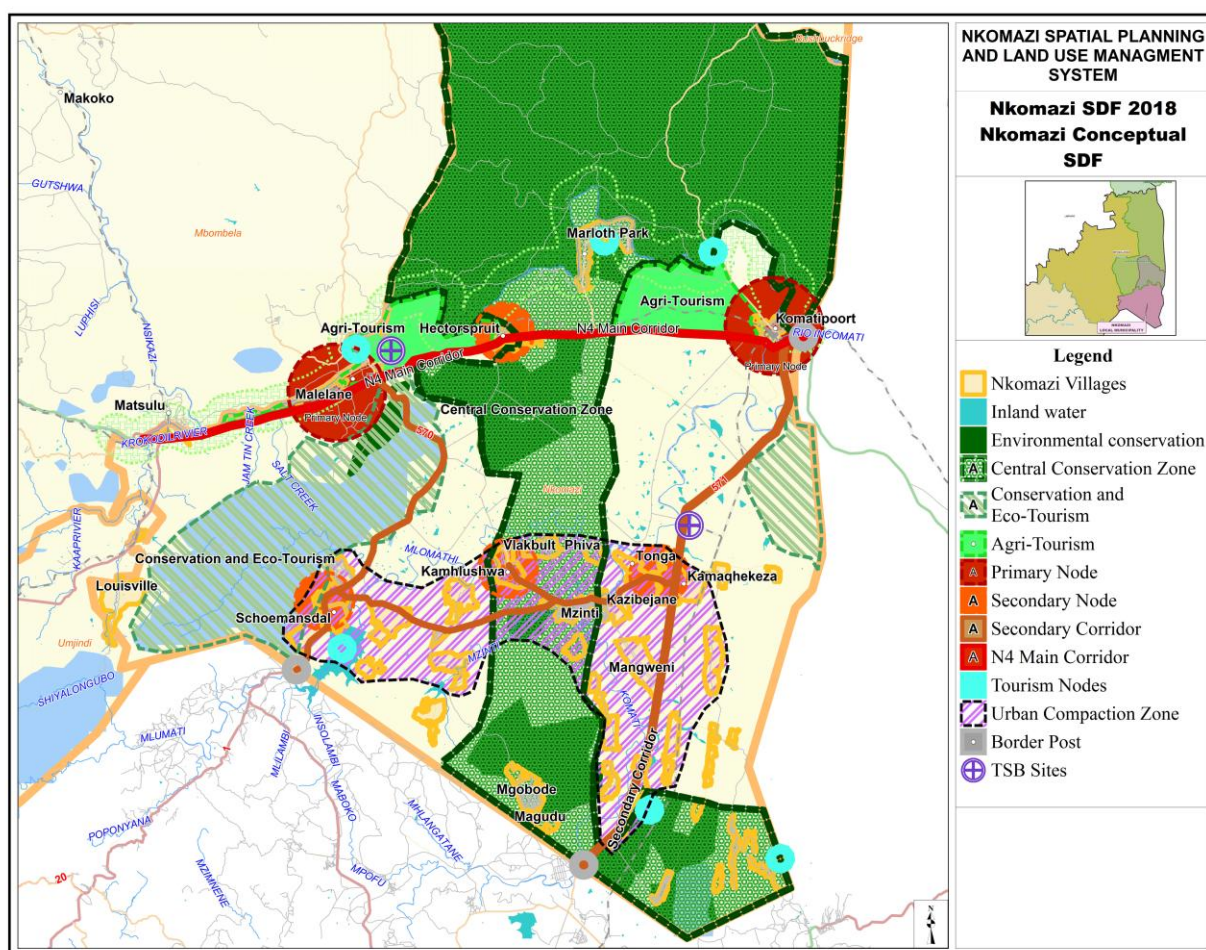


Figure 31: The map as illustration of a typical visual representation of the needed aspect in the SDF: Sectoral production

Source: Nkomazi SDF 2018

4.7 Conclusion

The implementation of the Spatial Planning and Land Use Management System in the Category B municipality, span over a period of four years. It entailed a couple of projects

running simultaneously as one project with many different variables, activities, milestones and deliverables. It required the establishment of the SPLUM by-law, the development of the wall-to-wall land use scheme, the review of the municipal SDF and the facilitation of the MPT.

CHAPTER 5 FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

5.1 Findings

The implementation of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) on 1 July 2015 changed the landscape of spatial planning, land use planning and development administration and had a significant practical impact on how land use planning and management are applied in South Africa.

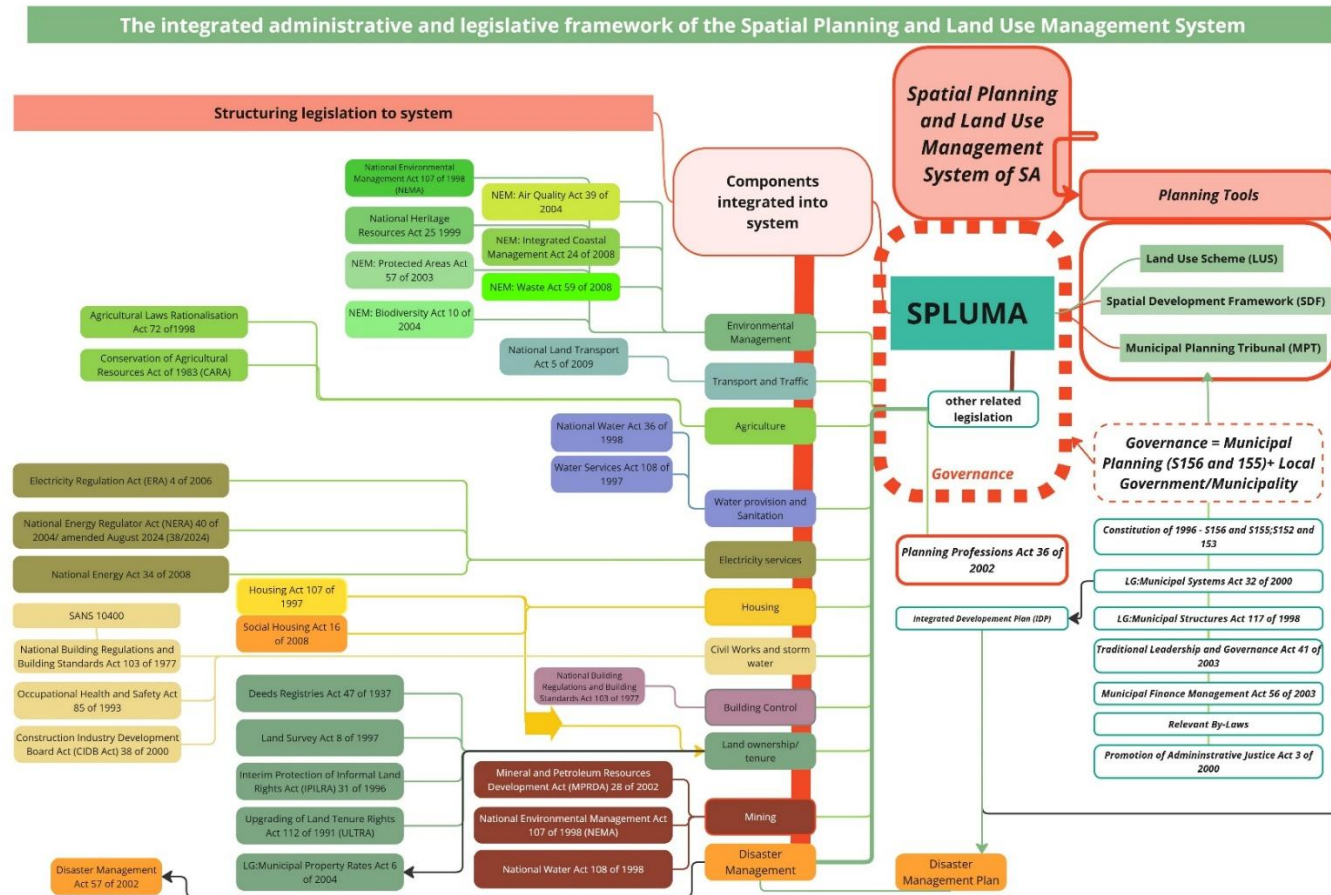


Figure 32: The integrated Spatial Planning and Land Use Management system's legislative and administrative framework (own creation)

5.1.1 The general implications of the South African Spatial Planning and Land Use Management System within the implementation of SPLUMA

The South African Spatial Planning and Land Use Management System was established by legislation (see Chapters 3 and 4). The planning profession itself, although not being the particular focus of this study, is governed by its own legislation (see Section 2.2). The planning system is vested in the government structures as per legislation that prescribes the planning system, its processes and establishes decision-making mechanisms within the system (Chapter 3).

The South African Planning system had to navigate significant structural changes from 1991 until the current date (Chapter 3). The influence of the interim constitution of South Africa in 1993 (Act 200 of 1993) and the Constitution of 1996 had the most significant impact on the planning system in that it required that municipal areas should cover the entire country (Chapter 3). This eventually led to the requirement for the wall-to-wall land use schemes required for all municipalities as per SPLUMA and its implementation in 2015.

The administration of the planning system and its implications proved to be challenging and structurally demanding on the municipalities, which became solely responsible for the planning administration of all land within the municipality. The inclusive land area includes, as per after the SPLUMA implementation and municipal restructuring, the land of Traditional Authorities, Agricultural land, urban land, border-posts and more. The administration, which had previously been split between the provincial government and the local government, had to be administered solely by the local government (municipalities). This affects the land use record even further, as required by SPLUMA, after the records had to undergo multiple government restructuring processes and then left the municipality to try and develop an inherent system to manage and secure the records, without the necessary capacity or budget. Capacity here refers to the necessary administration and planning staff needed to manage SPLUMA requirements in a wall-to-wall municipal area. The previous structure of a municipality was typically contained per larger urban area, within the urban edge and periphery. The new structures of

municipalities included multiple urban areas (towns or cities), as well as all agricultural and traditional land in between, with typically fewer planners than would have been present in one urban area (town). The capacity or lack thereof does not reflect on the planning officials in municipalities, but rather the inherited structure that is structurally insurmountable for the administrative system that it was assumed to be, as well as leading to a complete deficit in the budget.

5.1.2 The great increase of the scope of responsibility of municipalities in relation to the Spatial Planning and Land Use Management System as part of Municipal Planning, together with the extension of municipal boundaries and the issues that are prevalent

5.1.2.1 Broadened scope of responsibility

The research highlighted that Section 33(1) of SPLUMA effectively broadens the responsibility of municipalities in South Africa in that it is the body of first instance for all land development applications. Simultaneously, it mandates them to include all areas, irrespective of their characteristics or utilisation, within a single Land Use Scheme according to Section 24(1) of SPLUMA. Historically the current vast municipal area would include more than one or several land use schemes, one for each urban area. This requirement ensures that the municipalities' responsibilities now extend to diverse land use types, from traditional land to national parks. The practical implementation of the planning system on the Category B municipality, as indicated in Chapter 4, revealed that all the previous old town planning schemes were used or applied to areas outside the areas that it was originally written or developed for onto areas that were traditional areas as well as agricultural areas, after the wall-to-wall municipalities had been established and were waiting for legislation to establish subsequent wall-to-wall land use schemes that would cover the entire municipal area.

The broadened scope of responsibility for the municipality transfers a greater responsibility to schemes to include uses that were not traditionally included in the typical definitions of the old Town Planning Schemes associated with the old towns (and cities). The inclusiveness of the SPLUMA-required wall-to-wall land use scheme requires

inherent solutions to issues of land tenure, as it typically are within traditional and predominantly state-owned land, previously excluded land use activities, different concepts to previous town planning schemes and practical devices in order to accommodate the inclusive areas in a sound way. This did not just need a higher rate of public participation, as was required, but also a higher level of understanding and development of understanding context, needs and desirability, as well as a future vision (as it could be translated) of the inclusive areas. The scope of the practical implementation of SPLUMA inherent in the planning system was significantly larger than anticipated in terms of managing the responsibility of inclusiveness within the Land Use Scheme as well as the Spatial Development Framework. The content of the SDF and LUS as well as the planning processes changed in terms of the decision-making body, its structure and inclusion of areas outside the urban edge. Sections 23 (2) and 24 (c) of SPLUMA requires the incremental introduction and inclusion of traditional areas in terms of Land Use Management and Regulation and the participation of traditional council as part of the executive authority of the local government. Similarly. SPLUMA section 12(h) requires of informal settlements and traditional leadership to be included in the development framework of the SDF.

The responsibility of the planner or planning in the implementation of the SPLUM system is primarily vested in the legislation and governance of local government or municipalities. The key components of responsibilities are the development and processing of the Land Use Scheme as well as the Spatial Development Framework, which had a broadened responsibility in including the entire wall-to-wall municipal area, as opposed to the previous smaller related urban areas. The other systems that run parallel with planning are not the core function of the planning system, although it forms part of it. The systems related to environmental management, transport, traffic, agriculture, water and sanitation, electrical supply and demand, storm water, land ownership, mining, housing, disaster management and more, form part of the knowledge base of planning in order to manage the planning system, though it is not planning in itself and not the responsibility of the planner. It is the responsibility of the planner to have knowledge of these systems to plan.

The structural and geographical inclusion of all areas within the municipal area into the LUS and SDF provides the most significant broadening of the responsibility of municipalities.

5.1.2.2 Increased administrative burden and capacity

The study identified that the broadened scope under SPLUMA significantly enhanced the administrative duties of municipalities. They are now tasked with the development and administration of comprehensive land use schemes.

The transformative process of the implementation of SPLUMA and even earlier with the demarcation of the wall-to-wall municipalities, did not sufficiently or constructively evaluate and determine the needed capacity to facilitate and manage the expanded responsibilities of municipalities. For municipalities to efficiently handle this expanded responsibility, they need to build capacity, potentially employing more professional planners and establishing new administrative systems for effective record-keeping and land use application management.

This finding is in line with the literature that poses the view that planning is essentially procedural and includes the knowledge of many other different processes that are inherent in planning. The planning process requires focus to be able to determine and address capacity, within its own domain. An encompassing view of planning allows for oversights like capacity building and the identification of the need for capacity and the administration thereof.

5.1.2.3 Potential risks of administrative fatigue and obstructions:

The research alerted the researcher that municipalities should be assisted in the evaluation of the needed capacity to effectively and efficiently administer the land use planning and development applications. Alternatively, it could have a negative impact on the overall planning and development processes and the system itself. Inadequate administrative structures could lead to inefficiencies in the administration of planning and its applications, ultimately hindering local development and land use management.

The frequent comment about lack of capacity within municipalities reflects a pattern that has not been investigated, mitigated or addressed when the municipalities structurally changed from urban areas within an urban edge to wall-to-wall municipalities and exacerbated with the added responsibility of administration for a wall-to-wall land use scheme that was technically applied through the innovation of local municipalities to cope with their responsibilities without the provision of a sound calculation and budget to accommodate the vast increases in responsibility, specifically in the appointment of the relevant needed number of professional government officials and administrative staff within a well thought out structure. The lack of appropriate municipal employees to administer the planning system and administrative system, can lead to an overwhelming backlog of planning applications and required attention. The development, maintenance, public engagement, administrative functions, the administrative system, the record keeping, the electronic system, the proper implementation and governance of land use rights and more, not to mention the land use scheme and spatial development framework, housing and other needs, require specific focus and attention and cannot afford to be over-burdened if a municipality should have a healthy planning system. It is unrealistic to expect of municipal officials to have to cope with the burden of a system that has an inherent flaw that is not being addressed, leaving the municipality overwhelmed and having to work on the back foot instead of being able to plan constructively.

This finding partially aligns with the problem identification of lack of capacity within municipalities, although the nature of the lack of capacity here is related to a wrongfully calculated system and not any reference to the capacity of the municipal employees themselves. Education for the employees is not the only answer, as the system needs to be recalculated and addressed in order to build a sound administrative system that can manage a habitat for planning functions.

5.1.2.4 Land use planning and development applications and land tenure

The research revealed that land ownership is crucial in the consideration of planning and development applications. The current system still requires the owners of land to provide permission to submit any land use planning and development application as per SPLUMA Section 45(1) (a). Land ownership is still indicated by means of a title deed. This creates

significant difficulties in the possible processing of applications, within certain parts of the country that includes traditional areas. The previous 'homelands' are predominantly still registered to the ownership of the government. This implies that the people with the permission to occupy the land do not have official ownership, and thus it means that the municipality must find a way to legally accommodate the people living on government owned land.

Land ownership forms a core part of planning applications, land use activities and land use rights. The hybrid solutions in terms of land tenure complicate land development and management. This also affects the land use register and the planning administration system, as well as the responsibility of the municipality to regulate and manage land use in areas such as traditional areas where land ownership is an issue.

5.1.2.5 The land use registers as required by SPLUMA are at risk

The research has revealed that the land use register required by SPLUMA is at risk. The difficulty in land ownership and the capacity issue within administration poses a valid concern in the maintenance and credibility of the land use register. The land use registers for the provincial governments, as well as the municipalities, have gone through many stages of restructuring since 1994 for provincial government and 2000 for municipalities. The provincial government that administered land use and spatial planning in its capacity had to change departments a few times, which led to the passing on of administration and records from the old to the new, with complications and uncertainty. Similarly, municipalities' structures changed from being within an urban area into consisting of several urban areas, towns or cities that included agricultural land and traditional land. The structure of the administration change had to be dealt with by the relevant government structures on top of their own work that had to be done. The provincial government and the respective municipalities each had their own land use register. These registers had to be integrated into the SPLUMA required land use register. The restructuring of government departments and the restructuring of municipalities left the land use register incomplete. This is not a negative reflection on the government employees, rather a concern of dysfunction and neglect of the system that compromises the very thing the legislation requires.

5.1.3 The domain of Urban and Regional Planning is determined by legislation and the practice of planning

The result rendered by the application of SPLUMA and Municipal Planning, viz. that the planning domain is vested in the functioning of local government that administers all land use management and land development applications, as well as maintaining and administering the planning processes and serving as the executive authority for planning decision-making.

This reveals the critical importance of a well thought through administrative system that facilitates planning and subsequent decision-making. There are many parallel systems that create the context and environment of planning and are needed to implement planning and its outcomes, although these systems are not part of the core of the planning system itself.

5.1.4 Legislation determines the key components of the Spatial Planning and Land Use Management System, its processes and functions; together there are several parallel systems in congruence with the implementation of the Spatial Planning and Land Use Management System in South Africa

The Spatial Planning and Land Use Management system is established and informed by legislation promulgated by all spheres of government. See Figure 32 above. The planning system is implemented and maintained by the municipalities (local government), which are also the decision-making bodies for all land use management and development planning applications. They are the custodian of practical planning practice. The key aspects of the planning system, as indicated by SPLUMA as well as the physical implementation of the planning system, are formed by the planning tools of the local Spatial Development Framework and the wall-to-wall Land Use Scheme. Additionally, the decision-making body is vested in the municipality, in whichever form decided on within the provision of SPLUMA, such as the Municipal Planning Tribunal (MPT). The structure of the local government, in which planning implementation and practice are vested, is formed by legislation in the Local Government Municipal Systems Act 32 of

2000, the Local Government Municipal Structures Act 117 of 1998, the Municipal Finance Management Act 56 of 2003, the relevant by-laws such as either the Municipal Planning by-law or the Spatial Planning and Land Use Management by-laws, as required by the SPLUMA function. The planning processes and systems are subject to the Promotion of Administrative Justice Act 3 of 2000, which regulates the administrative system in promoting it as lawful, fair and reasonable.

The systems that are integrated into the planning system are also established by legislation. The Environmental Management Act 107 of 1998 (NEMA) instructs and regulates the environmental management. Other legislation that is part of the environmental management are the National Heritage Resources Act 25 of 1999, the National Environmental Management: Protected Areas Act 57 of 2003, the National Environmental Management: Biodiversity Act 10 of 2004, the National Environmental Management: Air Quality Act 39 of 2004, the National Environmental: Integrated Coastal Management Act 24 of 2008, and the National Environmental Waste Act 59 of 2008.

The transport and traffic systems are intertwined with the planning process under SPLUMA, as well as the development of the content for the SDF, the LUS and planning by-laws, and finally the National Land Transport Act 5 of 2009, together with any needed provincial legislation.

The framework for Agriculture was incorporated within the planning system through SPLUMA, which required the agricultural zoning as well as the municipality to govern the land use decision-making of agricultural land that is also included in the relevant land use scheme and SDF. Agricultural land is also subject to the Agricultural Laws Rationalisation Act 72 of 1998, the Conservation of Agricultural Resources Act of 1983 (CARA) that is vested in the National Government, although the local government can make decisions about the use of land. The relationship between the municipalities and that of agricultural land has not been clarified entirely, and that leaves room for omissions that may have a negative impact on agricultural land.

Electrical services as part of basic services, form a crucial part of the planning process, as an added process. Electrical services are governed and established by legislation and

should most definitely be considered in the planning system. The legislation relevant is the Electricity Regulation Act (ERA) 4 of 2006, the National Energy Regulator Act (NERA) 40 of 2004 and amended in 2024, and the National Energy Act 34 of 2008.

Housing forms part of the portfolio of planners as an added system to the planning system in its requirements and identification as per SPLUMA in the SDF and the LUS. Housing and the provision thereof are regulated by the planning system in that it provides the density and guidelines, as well as the location of housing. Housing is regulated through the Housing Act 107 of 1997 and the Social Housing Act 16 of 2008. This also relates to land ownership and the nature of land ownership.

Land ownership is a vital parallel system to the planning system. Only owners of land can apply for development or land use management changes as per SPLUMA. The land ownership processes are established by the Deeds Registries Act 47 of 1937, the Land Survey Act 8 of 1997, the Interim Protection of Informal Land Rights Act (IPILRA) 31 of 1996, the Upgrading of Land Tenure Rights Act 112 of 1991 (ULTRA) and the Local Government: Property Rates Act 6 of 2004.

Civil works and storm water are other parallel systems that inform the planning system. They were established by legislation in the National Building Regulations and Building Standards Act 103 of 1977, the Occupational Health and Safety Act 85 of 1993, the Construction Industry Development Board Act (CIDB) 38 of 2000, and the South African National Standards (SANS) 10400.

Building control, that forms a parallel system to the planning system, and that also informs it, is legislated through the National Building Regulations and Building Standards Act 103 of 1977. Building control aspects are also directly related, or rather directly affected by the content within the land use scheme in its development parameters or zoning controls and regulations. Additionally, other restrictions may be indicated on the title deed or Surveyor General's diagrams, such as servitudes and more, that may affect building control.

Mining is a significant land use activity that is prevalent in certain South African provinces, such as Mpumalanga and the Northern Cape. Mining is regulated and its use is

established by legislation within the Mineral and Petroleum Resources Development Act (MPRDA) 28 of 2002 and largely influenced by the National Environmental Management Act 107 of 1998 (NEMA) and the National Water Act 108 of 1998. SPLUMA (Schedule 2, Section 1 (j)) requires the inclusion of a zoning process for mining purposes within the relevant wall-to-wall land use scheme. Mining was previously administered by the provincial government and the authority of the land use and development thereof for the decision-making of the use transferred to the municipality. The municipality had to develop measures to control and regulate mining as a use within its area. “Mining purposes” as defined in SPLUMA is defined as follows, viz. that it “means purposes normally or otherwise reasonably associated with the use of land for mining”. The rest of the regulations and control measures had to be developed by the municipality for inclusion in the wall-to-wall land use scheme.

Disaster management is an integral part of the Integrated Development Plan (IDP) that also forms part of the SDF. It was established and is regulated by the Disaster Management Act 57 of 2002 and requires the establishment of municipal disaster management centres to address the impact of any possible disasters in anticipation of plans and directives to prepare emergency responses.

The legislation that informs the system are largely vested within the Constitution, although there are several pieces of legislation that are not vested in the 1996 Constitution and were promulgated before 1996.

The governance structure in which the planning is vested was established by legislation in specifically the Constitution of 1996, the White Paper on Local Government of 1998, that is currently in review since March 2025, the local government legislation and additionally the roles assigned by SPLUMA in terms of the planning system.

5.1.5 Issues with the implementation of the Spatial Planning and Land Use Management System

The most significant issue that was encountered by the implementation of SPLUMA, was the structural capacity that is discussed in Section 5.4 below.

5.1.6 General

Town and Regional Planning or Urban and Regional Planning has not changed in terms of its original purpose and functioning (see Chapter 2). The practice of *planning* is still *planning* as it was traditionally (see sections 2.1, 2.2 and Chapters 4 and 5), though most narratives present in planning theory are related to criticism to planning, rather than building planning (see section 2.4 in Chapter 2). The criticisms can be used to improve planning, but it does not change the framework and larger system of planning. The larger part of the criticisms to planning is vested in a fundamental issue with planning itself, when many of the criticisms are focused on certain aspects of planning, that form part of it and is not planning itself. Planning has been legislated into a framework within which it functions. Planners are not social workers, though planners need to be cognisant of and sensitive to the social network and functioning within a context, and the core of planning is to preserve and enable quality of life for people. Planning is not Geography, though planners need a fundamental knowledge of geography in all its forms to facilitate working within the human and natural environments and then there is the need to understand how this functions. Planning is not activism but rather an individual conviction and not part of planning itself, though planners carry the ethical and professional responsibility to ensure that the public participation process is not a tick box, but a sincere investigation and determination of the planning at hand. Planners in South Africa are bound by ethical conduct as professional planners, and this requires strict ethical conduct to be upheld. Planning is not politics, though planners should be sensitive to political contexts and have compassion and understanding for these to function within the planning framework. Planning has been legislated into a framework within which it functions. The planning framework is legislated by the government. Planning functions within a governmental system and the legislation is influenced by the governance structures and subsequent legislation. The systems do not change what planning is, but it can change the orientation of planning. The decision-making power is vested within the structures and systems of government and the way decisions are made. Planners do not hold this power, unless it is a planner who is within a government position to make decisions. Decisions are guided by legislation and policy that prescribe conditions that need to be upheld secure a sustainable habitat for people and secure quality of life with the best possible functionality

under any circumstances. All this should be done within the curbs of the domain of planning.

5.2 Conclusions

The planning system is framed by legislation, and the implementation must adhere to the framework. This is also where planning practice functions.

The decision-making body of the planning system is vested in the local authority or municipality. This was the most significant change brought about by SPLUMA, apart from the structural change of the wall-to-wall land use scheme. The municipality has the authority to develop their spatial planning and land use management system within the bounds of the law and make all subsequent decisions on the activities that take place on the land within its boundaries.

The broadened scope of responsibilities for the municipalities in terms of planning, administration, implementation and management, created significant challenges for municipalities to face and because the restructuring of the municipalities preceded the implementation of SPLUMA with several years, the burden of responsibility was overlooked when capacity is considered.

The purposeful and needed administration to ensure a reliable land use register, as required by SPLUMA, as well as the proper attention to land use management and forward planning measures will be impacted by the capacity void in the structure.

Land ownership plays a significant role in planning itself and land within traditional authorities are still prone to the ownership of national government, which has not been transferred yet. The continued unresolved relationship between national government and the traditional authorities creates issues for the implementation of SPLUMA and the legal use of land for the people with permission to occupy the land in order to function in the planning system.

The planning system functions in a domain larger than the planning system as indicated in SPLUMA, although it could be argued that legally SPLUMA portrays the planning

system and its key components. The planning domain is vested in the local government in terms of decision-making, administration and implementation. The local government consists of a larger framework of legislation, which also informs the planning system.

The South African Spatial Planning and Land Use Management System is primarily considered to consist of the two central planning tools that are the wall-to-wall land use scheme and the subsequent Spatial Development Framework. The decision-making body that implements the planning tools is governed by the municipality. The Municipal Planning Tribunal (MPT) and the delegated planning official(s) are assigned with the legal right to make decisions in terms of planning.

There are several theoretical points of view on what a planning system is and through some of these views, the planning tools may not be regarded as important, which can create a skewed view of planning practice itself.

The planning system, as it is practiced and implemented, does allow the accommodation of all kinds of theoretical views of planning. It requires much public participation, environmental engagement, consideration and permission, special attention to the formalisation of previously disadvantaged areas, the inclusion of a fractured planning landscape, most particularly through the expansion of what a municipality is, the wall-to-wall boundaries and provision of services throughout, and of course much more. The planning system is not there to control to disadvantage, it is there to enhance the quality of life of the people living in settlements, whilst maintaining the environment and economic access and preservation.

5.3 Recommendations

5.3.1 The Integrated Development Impact Assessment (IDIA)

Planning practice functions within the given legislative framework and is vested in the local government.

The Integrated Development Impact Assessment (IDIA) is a proposed impact assessment that will function as a guide for determining the impact of development

planning and land use management decisions or considerations (applications). This will assist with the need for capacity to administer and manage planning. The proposed IDIA will be vested in the planning system itself and use the other subsequent influential systems, in an integrated manner, to establish the impact of proposed development and planning decisions. This will prevent a skewed focus or approach in planning decision-making.

The NEMA Environmental Impact Assessment (EIA) has been legislated and regulated and guides even certain kinds of planning decisions, as well as being a legal requirement. The IDIA should be similar. The planning system itself is the foundation onto which other systems latch and it will create a more consistent structure of decision-making in planning that should provide stability and clarity in decision-making approaches. It should become part of SPLUMA in the future amendments to be made.

5.3.2 Municipal planning capacity

The several restructuring processes that the local government and provincial government had to go through, left the municipalities under-capacitated for all the legal responsibilities and requirements that they have in terms of planning and municipal planning. The structural capacity of municipalities did not enjoy the needed attention and most probably similarly the needed budget, when the planning officials and supportive administrative structures were introduced. The planning administrative system that existed pre-1991, consisted of provincial government's planners and administrative staff as well as the municipal planners and administrative staff. A key factor was that the planners of a municipality would typically be linked to a certain town or city. The amalgamation of various municipalities, structurally and geographically, into one municipality after the enactment of the Constitution that required that all land in the country should form part of local government. This meant that local government was not just related to urban areas anymore but also had to administer land previously administered by the provincial government. This first structural change is significant and should have been thoroughly thought through when the structures for and related to planning were envisaged. This structural change meant that planning and municipal planning could not just function as it once did and that proper consideration should be given to the internal structure,

processes and administration of planning that includes the number of professional planning officials and administrative, as well as supportive staff that should be required to uphold a proper planning system.

The second major shift in the gap of municipal capacity in terms of planning, was the establishment of the wall-to-wall land use scheme. The burden of establishing a sound land use register, developing adequate and functional planning processes and structures that would include all land area within the new land use management system was paramount. This had to be done after municipalities already had to cope with managing land outside the urban edge that included the previously provincial authority over agricultural and traditional land, without any provided structure.

The rather significant amount of time had lapsed between the restructuring of the municipalities during 1998 till 2000 and the establishment of SPLUMA after it had been promulgated in 2013 and implemented in 2015, given a five- year period until 2020. It could be argued that this rather large time lapse in anticipation for relevant planning legislation caused a gap in the rethinking, stock-taking and identification of the lack of structural capacity for municipalities to deal with planning and municipal planning in all its vastness.

The time lapse between the restructuring of municipalities and the implementation of SPLUMA left the municipality with the original planning system that was not thought through after the restructuring of the municipalities, held by the assumption that there was a fully functional planning department in most municipalities that should just know how to cope with the planning system (with a bit a help from the provincial government). This could be argued to have been an insurmountable unintended trap for municipalities and their planning and administrative officials to experience the criticism of incompetence and lack of knowledge. Even if this were true, I posit that the problem is structural rather than individual.

It is proposed to develop a thoroughly thought-through planning structure within municipalities specifically focused on the number of planning officials needed to maintain SPLUMA-required principles, processes and structures within the municipality. This can

be done rather simply by reflecting on the previous municipal structure, the previous provincial structures and the number of planners and administrative staff needed at that point in time related to the activities on land situated within the area. Additionally, bring in structures for traditional areas and specific focus on relationship within these areas to adhere to proper co-operation and inclusiveness within the development, amendment and structures of the local SDF and land use scheme as per SPLUMA. It is not possible for one, two or three planners to attend to an entire municipal area in terms of all planning and municipal planning requirements, even apart from the daily administrative and functional duties that they have.

An example of an estimated number of planning officials in a Category B municipality: The municipality had three ordinance related Town Planning Schemes (TPS) in that they were related to three urban areas: The Greater Malelane Town Planning Scheme, 1997; the Komatipoort Town Planning Scheme 1992; and the Marloth Park Town Planning Scheme 2000. There were other areas that could also be deemed urban areas, like Hectorspruit, just outside Malelane, Schoemansdal, Kamhlushwa, Kaapmuiden, Kamaqhekeza and Tonga. A significant part of the Kruger National Park (KNP) also forms part of this municipality, that had their own land use management system that had to be incorporated. Each of the urban areas had approximately two to three planners, if we look at the old TPS, that leaves a minimum of six planners for the Malelane, Marloth Park and Komatipoort area. This is excluding the traditional areas of Schoemansdal, Kamhlushwa, Kaapmuiden, Kamaqhekeza and Tonga, as well as the KNP and Hector spruit, as well as the planners who administered planning processes on provincial territory, that could have been an estimate of five to eight planners. That would mean that the minimum number of planners in the municipal area would have been eleven to seventeen planners working for the government, responsible for the planning processes and system. The reconstructed municipality with its functional headquarters in Malelane, had two appointed planners who had to manage all the work, together with one intern. Later another planner was appointed. They had to manage all land development and land use management applications, manage different portfolio appointments such as housing, community engagement, the land use register, managing processes and projects, maintaining the planning administration as well as other administrative duties

and more – all this whilst the minimum number of planners alone, without administrative support, would have been at a minimum around eleven planners, with the territory excluding the traditional areas, agricultural land, the smaller areas such as Kaapmuiden, Hectorspruit and the KNP, together with the Lebombo Border to Mozambique and the border to Eswatini. This alone should provide perspective on the lack of structural capacity that municipalities experience. The municipality is simply not structurally geared to deal with the planning area and has appealed for a reinvention of planning structures that are related to the restructured municipal areas. This also implies that a recalculation of budget should be included on the basis of new legislation on how to allocate appropriate funds for a functional planning system that could realise the requirements and betterment of SPLUMA and a Spatial Planning and Land Use Management System.

5.3.3 Land Use Register

The government should develop a country wide process to validate, confirm and register all land use rights. The budget for this should not come from the Municipality itself, but from either the National or Provincial governments. Certain municipalities with more challenges could be prioritised. The process of establishing land use rights within the municipal area should be navigated and run by the local government, not by a service provider. Rather build internal capacity than a temporary capacity. The process of determining and recording land use rights will entail detailed involvement, with the necessary knowledge that the municipality need. The feedback of this process will enhance and improve the current land use management and spatial development processes within the municipality.

The determination of the land use register, containing either new information or confirming current information, will entail the establishment of the list of properties that are surveyed within the municipal area and the identification of any land parcels that have not been surveyed. A review of any record of use or applications and permits related to the property that is available, either manually or electronically, should be done. This should include previous and historical information from the provincial and local governments. In certain instances, it could be necessary to involve owners of properties to test and confirm. Furthermore, a confirmation, as far as possible, should be conducted through

all government publications. This is a mammoth task and essential to establish the correct land use register as SPLUMA requires it.

5.3.4 The implementation and value of the proposed framework

The implementation of the indicated framework with components as mentioned in sections 5.3.1, 5.3.2, 5.3.3 and 5.3.4, will contribute to a more reliable planning administration, future planning capacity, better budget allocation, development and planning administration efficiency, improved infrastructure focus, inclusivity and a planning approach that is practiced in terms of coherent administration and not administrative fatigue.

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ANNEXURE A:

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SPLUMA: The Transformation of Land Use Planning Administration and Governance in South Africa

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Abstract

The physical administration of land use planning and management underwent a fundamental change upon the enactment and implementation, of the *Spatial Planning and Land Use Management Act* 16 of 2013 (SPLUMA), partly because section 33(1) of this Act provides that the municipality is the body of first instance for land use applications. The structural and administrative change of decision-making and record-keeping moved from a dual system of land-use administration, formerly shared by the provincial government and the local government, entirely to being the responsibility of the local government. This included the land use administration of traditional areas, mostly land owned by national government. This also implies that the historical division between urban, rural, traditional and agricultural areas, has been unified under the municipal area in terms of the wall-to-wall land use scheme and subsequent land use planning and development administration. This follows the 1996 constitutional requirement that municipal areas cover the entire country. This article considers the transformation of land use planning administration and governance in terms of land use planning and development administration. It considers the legislative frameworks, before and after the promulgation of the *Constitution* of 1996, that inform land use planning and relevant to the transformation to the SPLUMA land use management system. The administrative effects that changing legislation and geographical structures have on the land use system are discussed.

Keywords

Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA); land use management system; municipal boundaries; land use planning; land tenure; land use administration; municipalities; wall-to-wall land use schemes; municipal governance; urban edge

1 Introduction

The administration and decision-making of land use planning changed with the enactment¹ and then the implementation² of the *Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)* and its Regulations.³ What impact did the implementation of *SPLUMA* have on the spatial planning and land use management system? Most importantly, it significantly expanded the needed capacity of local government in terms of the land use planning system that includes decision-making and administration. The momentum of these changes have accumulated since the promulgation of the 1996 *Constitution*. The implications of the geographical boundaries of municipalities, the interplay between the provincial and local governments' land use administration and the spatial planning and land use management system form the core of this historical momentum. This is, however, complicated by historical land ownership issues.

Firstly, the article considers what the spatial planning and land use management system is and what constitutes it. Secondly, it considers the land use scheme as the key planning tool to govern land use planning within the planning system and its administration. Thirdly, the changing landscape of municipalities or local government is considered, more particularly its geographical and administrative scope in terms of land use planning. These considerations will answer the question of what impact section 33(1) of *SPLUMA* has on the capacity of municipalities, being the body of first instance for land use planning and development administration. These physical changes to land use administration necessitate a re-thinking or consideration of the needed capacity and possibly the structure of the land use administration system.

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¹ The *Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA)*.

² Proc 26 in GG 38828 of 27 May 2015. The Act came into operation on 1 July 2015.

³ GN R239 in GG 38594 of 23 March 2015 (Regulations in terms of the *Spatial Planning and Land Use Management Act 16 of 2013*; the *SPLUMA* Regulations).

2 The spatial planning and land use management system in South Africa

What can be constituted as the spatial planning and land use management system? Legislation primarily informs the framework and structure of this system. *SPLUMA* is the first and most long-awaited national legislation that introduced a unified system for spatial planning and land use management in order to address the system that consisted of fractured legislation inherited from the apartheid government.⁴ The fractured legislation refers to the different forms of legislation prescribed to the different segregated areas.⁵ Structurally and geographically it refers to areas within the urban edge, outside the urban edge, the so-called historical "homelands" and rural areas.⁶ The geographical and administrative structures of municipalities changed before and after the adoption of the *Constitution* of 1996, which influenced the application of planning legislation as well as the formulation of subsequent legislation. This is discussed under section 4. Apart from the structural division of municipalities, this network of legislation also included legislation that applied to the four pre-democratic provinces, the four independent states and six self-governing territories.⁷ The turning point for the significant change within this system was when the Government of National Unity assumed office in May 1994 and established the nine provinces within the context of the *Interim Constitution*.⁸ This unified the different governing and administrative bodies within the Republic of South Africa and assigned administration to different spheres of government to address development and service delivery.⁹ This initiated the movement

⁴ Schoeman 2015 *Town and Regional Planning* 53, 55.

⁵ Van Wyk *Planning Law* 44-50.

⁶ De Visser 2009 *Commonwealth Journal of Local Government* 8.

⁷ The *Development Trust and Land Act* 18 of 1936 was responsible for what was defined as a "black area". The *Bantu Authorities Act* 68 of 1951 (also inadvertently called the "*Black Authorities Act*") provided the larger legal framework for the establishment of the independent areas; each independent area were established in this Act, for example KaNgwane, as the area where SiSwati people lived, was established on 28 November 1975 by this Act and its government established in 1977; Bophuthatswana, as an area where Setswana people lived, was established on 21 April 1961, and gained independence on 6 December 1977. Each independent area was established at different times within this Act.

⁸ National Treasury 1999
<http://www.treasury.gov.za/publications/igfr/1999/chapters.pdf> (Chapter 1: Profile of the Provinces).

⁹ National Treasury 1999
<http://www.treasury.gov.za/publications/igfr/1999/chapters.pdf> (Chapter 1: Profile of the Provinces).

that resulted in the adoption of *SPLUMA* with reference to land use planning.

2.1 The content of *SPLUMA* and what the system includes

The purpose of *SPLUMA* was to create a unified and integrated spatial planning and land use management system for the whole of South Africa.¹⁰ This *SPLUMA* system is directed by inherently developmental principles¹¹ that should be considered and motivated in all development decisions. The developmental principles are similar in purpose to the principles of the *Development Facilitation Act* of 1995. Further, the legislated system provided for the governance system and description of the roles of spheres of government within the planning system.¹² It outlined the establishment and functioning of the Municipal Planning Tribunal (MPT),¹³ which is prescribed as the decision-making body for land use planning applications and considerations. The system confirms the authority of the local government¹⁴ and the foundational municipal role in the planning system.¹⁵ It provides for the land use scheme as the primary instrument for land use

¹⁰ Schoeman 2015 *Town and Regional Planning* 53-55; Van Wyk and Oranje 2014 *Planning Theory* 356-357.

¹¹ Section 7 of *SPLUMA*. See also ss 6 and 8 of *SPLUMA*.

¹² Section 9 of *SPLUMA* refers to the National Government's role of support and monitoring in terms of the Act. S 10 of *SPLUMA* refers to provincial governments' role of support and monitoring in terms of the Act. S 11 of *SPLUMA* refers to the considerations of support and monitoring for municipalities. Ss 13 and 14 of *SPLUMA* indicate the requirements and content for a national Spatial Development Framework (SDF). Ss 15-17 of *SPLUMA* indicates the requirements, content, legal stance and governmental alignment of a provincial SDF. Ss 18-19 of *SPLUMA* indicates the requirements and content of a regional SDF. Ss 20-22 of *SPLUMA* indicates the required process, content and decision-making authority for a municipal SDF and the necessity for alignment of the SDFs for governmental spheres. S 23 of *SPLUMA* establishes that the municipality is the executive authority over land use management and the land use scheme and indicates the requirement of subsequent by-laws as well as the inclusion of traditional authorities in its decision-making process. S 33(1) establishes that the municipality is the body of first instance for development applications and is noted as municipal land use planning.

¹³ Sections 35-50 of *SPLUMA* prescribe the establishment of a Municipal Planning Tribunal (MPT), the composition and other internal arrangements of the MPT, the prescribed process of consideration and decision-making of land development and management applications (where applicable).

¹⁴ Sections 33 and 23 of *SPLUMA*.

¹⁵ Schoeman 2015 *Town and Regional Planning* 53-55; Van Wyk and Oranje, 2014 *Planning Theory* 356-357.

management¹⁶ and stipulates its required content and functioning.¹⁷ It stipulates general inclusive land uses,¹⁸ the definition of a land use scheme and the required contents of a scheme.¹⁹ Furthermore, it also includes the outline of processes and procedures for planning applications with guiding timeframes.²⁰ In terms of spatial planning it prescribes the Spatial Development Framework (SDF) as the primary tool for spatial planning.²¹ Lastly, it outlines appeals procedures for land use applications and repeals outdated legislation.²² The mentioned content forms the statutory system for spatial planning and land use management in South Africa.²³ This system took many years to develop, and its enactment and implementation were essential to address and rectify the fragmented land use planning legislation inherited from South Africa's past.

2.2 Structure of legislation pre SPLUMA/SPLUMA and its influence on addressing the planning system

The legal structure of the inherited system²⁴ largely involved legislation that was promulgated on a provincial governance level, but also included

¹⁶ Sections 24-32 of *SPLUMA*. S 26(1) of *SPLUMA* specifically indicate that a land use scheme has the force of law, whereas the Spatial Development Framework (SDF) is indicated as a guide for decision-making on land development applications; see ss 22(2) and 42(b).

¹⁷ Sections 24-32 of *SPLUMA* stipulate the needed content and administration processes for the land use scheme (also see regs 14-19 of the *SPLUMA* Regulations that provides for the submission of land development and land use applications, categorisation of applications as well as process timeframes and other implications that includes traditional authorities).

¹⁸ Schedule 2 of *SPLUMA* lists the required land use categories and purposes, also see s 23(2) of *SPLUMA* and reg 3 of the *SPLUMA* Regulations that refer to the involvement of traditional authorities and require some integration.

¹⁹ Section 25(2) of *SPLUMA* stipulates the required content of a land use scheme.

²⁰ Section 44 of *SPLUMA* stipulates the requirement of prescribed timeframes for land use and land development applications. Also see reg 16 of the *SPLUMA* Regulations.

²¹ Sections 12-22 of *SPLUMA* indicate the required content, considerations and procedures for national, provincial, regional and municipal SDFs as the spatial planning tool in *SPLUMA*.

²² Schedule 3 of *SPLUMA* repeals five Acts in its entirety, which includes the *Development Facilitation Act* 67 of 1995, the *Physical Planning Act* 125 of 1991, the *Less Formal Township Establishment Act* 113 of 1991, the *Physical Planning Act* 88 of 1967 and the *Removal of Restrictions Act* 84 of 1967.

²³ See the summary of *SPLUMA* in the Act itself.

²⁴ Schoeman *Urban and Regional Planning* 3. Schoeman categorised the nature of spatial planning that involved the related planning legislation in South Africa into three phases as follows: the urban and rural formation phase (1652 to 1948); the urban and rural separation (fragmentation) phase (1948 to 1994); and the urban re-integration phase and rural development (post-1994). The urban and rural formation phase, as well as the fragmentation phase, produced numerous pieces of legislation that had to be redressed to confront the urban and rural segregation.

national legislation and the local town planning schemes. As part of addressing this structural difficulty, *SPLUMA* with its Regulations were promulgated as national legislation,²⁵ to create the umbrella for a uniform South African land use planning system. The intent was that subsequent provincial legislation would follow in repealing the inherited provincial ordinances of the previous dispensation, which were primarily used for land use planning applications within urban areas before the implementation of *SPLUMA* or the repeal of the provincial ordinances by new provincial legislation.²⁶ Land use planning applications are discussed more fully in section 3 below. Considering the different levels of legislation in the statutory land use planning system in its transition, the restructuring of this system could be regarded as being complicated in that legislation cannot be repealed without the promulgation of replacement legislation.²⁷ Legislation can only be repealed on the same administrative level that it was originally promulgated in – i.e., provincial legislation repeals provincial legislation, national legislation can only repeal national legislation and not provincial legislation. Unfortunately, the promulgation of *SPLUMA* did not produce the timely desired provincial legislation²⁸ in all provinces. The result is that municipal by-laws mostly preceded the needed and related provincial legislation, except for the Western Cape.²⁹ The related provincial legislation followed later and, in some cases, still should be promulgated in order to repeal the ordinances.³⁰ It was strategically needed to promulgate *SPLUMA* at a national level in order to absorb the preceding development of transformative legislation and repeal other foundational planning legislation from the previous dispensation.

2.3 The absorption and replacement of legislation within *SPLUMA*

²⁵ See GN R239 in GG 38594 of 23 March 2015.

²⁶ Van Wyk and Oranje 2014 *Planning Theory* 356-357.

²⁷ Van Wyk 2013 *SAPL* 102.

²⁸ Van Wyk and Oranje 2014 *Planning Theory* 357.

²⁹ Poswa and De Visser 2017 <https://dullahomarinstitute.org.za/multilevel-govt/publications/provincial-planning-laws.pdf/view> 3.

³⁰ Limpopo Province still needs to promulgate the Limpopo Spatial Planning and Land Use Management Bill, 2022. The *Mpumalanga Town Planning and Land Related Laws Repeal Act* 2 of 2016 came into operation on 1 October 2019 and repealed the relevant ordinances 15 and 20 of 1986. The Northern Cape Province repealed Ordinance 15 of 1985 in 1998 but still needs to establish provincial legislation in line with *SPLUMA*. The Northern Cape use appropriate by-laws, for example the *Spatial Planning and Land Use Management By-law*, 2015 of Ga-Segonyana Local Municipality. The Eastern Cape Province still needs to establish *SPLUMA*-related legislation to repeal the Ordinance. The Eastern Cape Province recently enacted legislation for environmental management, tourism and a socio-economic consultative council (2024), but it is not effective yet.

SPLUMA was set to create the spatial planning and land use management system in South Africa that accumulated and integrated the content of the *Development Facilitation Act (DFA)*, Green Paper on Development and Planning (1999), the White Paper on Spatial Planning and Land Use Management (2001) and the Draft Land Use Management Bill (2008)³¹ as the legislative platform for planning across the whole country. In parallel, the White Paper on Land Reform (1991) was a necessary first step to promote the Abolition of Racially Based Land Measures Bill in 1991, that was enacted in June 1991. The *Abolition of Racially Based Land Measures Act* 108 of 1991 simultaneously repealed discriminatory laws related to land – this included the 1913 and 1936 *Land Acts*.³² *SPLUMA* also repealed, replaced and partially absorbed the *Removal of Restrictions Act* 84 of 1967, the *Physical Planning Act* 88 of 1967, the *Less Formal Township Establishment Act* 113 of 1991, the *Physical Planning Act* 125 of 1991 as well as the *DFA*.³³

2.3.1 *Development Facilitation Act (DFA) and the SPLUMA system*

The *DFA* was repealed by *SPLUMA*. *SPLUMA* absorbed and appropriately adjusted the general principles for land development of the *DFA*.³⁴ *SPLUMA* included a landmark ruling from the Constitutional Court in terms of land use planning administration by adding section 33(1) that declares the municipality as the body of first instance for land use planning and development applications.³⁵ Van Wyk and Oranje³⁶ state that the *DFA* was the first post-apartheid transformative legislation in the system of transformative legislation.³⁷ However, the *DFA* posed many challenges that the government had not foreseen, which is understandable in the context in which it was promulgated. Some of these challenges are discussed below.

³¹ Schoeman 2015 *Town and Regional Planning* 52.

³² Maleham *Almost Three Years After Commencement of SPLUMA* 10; Schoeman 2017 *International Journal of Transport, Development and Integration* 183, 191; *Abolition of Racially Based Land Measures Act* 108 of 1991.

³³ Schoeman 2015 *Town and Regional Planning* 44; *SPLUMA* Schedule 3.

³⁴ Section 3 of the *Development Facilitation Act* 67 of 1995 (specifically s 3(1)(c)(i-vii), listing the development principles); Schoeman 2017 *International Journal of Transport, Development and Integration* 183.

³⁵ Steyn and Van Wyk *Planning Law Casebook* 33; *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* (CCT89/09) [2010] ZACC 11 (18 June 2010).

³⁶ Van Wyk and Oranje 2014 *Planning Theory* 356.

³⁷ Schoeman 2015 *Town and Regional Planning* 44; Van Wyk and Oranje 2014 *Planning Theory* 356.

2.3.1.1 *DFA* and land use planning administrative authority incorporated in the *SPLUMA* system

The *DFA* was intended to facilitate and quicken development as post-apartheid legislation as a temporary measure awaiting the passing of an all-inclusive piece of land use legislation.³⁸ The *DFA* allowed for the establishment of Provincial Development Tribunals and enabled them to make land development decisions³⁹ and that were administered by the respective provincial administration.⁴⁰ Municipalities typically administered land development applications and management of decision-making regarding applications within their jurisdictions. The changing geographical structure of municipalities played a significant role in this development of the land use planning system. This is discussed further in section 4, that considers the change from the municipal areas that had only consisted of urban areas during the previous dispensation, to the wall-to-wall municipal areas that includes all areas. In this transitional period, it caused a parallel process in terms of development approvals within a municipal area, after the restructured wall-to-wall municipalities. The parallel process also involved the amendments of related land use schemes.⁴¹ The complications of the land use scheme are discussed under section 3. In the functioning of the Provincial Development Tribunals, it appeared at times as if developers were taking advantage of the *DFA* development tribunal process. It could be argued that there were developers who attempted to sidestep the local authority or possible negative outcome from a municipality in land development applications. One such example turned out to be a landmark ruling from the Constitutional Court, although the implementation of this ruling was not successful until the implementation of *SPLUMA* had taken place.

The landmark Constitutional Court ruling related to a matter between the City of Johannesburg Metropolitan Municipality (CoJ) and the Gauteng Development Tribunal, that affirmed the Supreme Court of Appeals judgement. This judgement declared that Chapters V and VI of the *DFA*

³⁸ *Albert Dykema v Arthur Pule Malebane and Bela-Bela Local Municipality* (CCT332/18) [2019] ZACC 33 (10 September 2019).

³⁹ Section 15(1) of the *DFA* allows for the establishment of development tribunals for each province within South Africa.

⁴⁰ Section 15(9) of the *DFA* establishes the tribunal registrar as an officer that is in the service of the provincial administration in the capacity of land development, the law or administration.

⁴¹ Steyn and Van Wyk *Planning Law Casebook* 30, 31.

were unconstitutional and invalid⁴² because of the contradictory authority to make decisions on land use development and management applications. The matter related to the powers that the *DFA* attributed to the provincial tribunal to make decisions on applications that entailed rezonings and township establishments in terms of the *Town Planning and Townships Ordinance* 15 of 1986, which the municipality (CoJ) typically made decisions on. The CoJ did not agree with this dual system between the provincial administration and the local government administration of development or land use planning applications. The CoJ sought relief from the court to determine whether rezoning and the establishment of townships should be determined by the provincial government, the local government or both. The CoJ maintained that "municipal planning" was reserved to municipalities in terms of section 156(1) of the *Constitution*, read with Part B of Schedule 4 to the *Constitution*. In accordance with this principle, the CoJ contested two development applications within its boundaries that were approved by the Gauteng Provincial Tribunal. The CoJ attempted to appeal these decisions and the provincial tribunal opposed leave to appeal the approvals. The provincial tribunal was convinced that their authority to make decisions on urban and rural development in terms of land use and development applications was justified under Part A of the Schedule 4 of the *Constitution*. The judgement determined that "planning" was a function of "municipal planning" as indicated in the *Constitution*.⁴³ It also established that "planning" in the context of a municipality included the zoning of land and the establishment of townships.⁴⁴ This would typically imply that it was the responsibility of the municipality to administer and make decisions on land use planning and development matters. Subsequently, the mentioned chapters of the *DFA* were ruled unconstitutional and invalid. However, to address the disruptive effect that this ruling would have on administration and development, the Constitutional Court suspended the order of invalidity for 24 months. The Court intended to provide time for Parliament to pass new legislation to replace the *DFA* and provide for a framework of legislation for spatial planning and land use management in South Africa. Additionally, the Court prohibited provincial tribunals from processing any new applications within the CoJ and the eThekweni Municipality.⁴⁵ The rest of the

⁴² *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* (CCT89/09) [2010] ZACC 11 (18 June 2010) Media Summary.

⁴³ Schedule 4 Part B of the *Constitution of the Republic of South Africa*, 1996 (the *Constitution*) indicates "municipal planning" as a function of local government.

⁴⁴ *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* (CCT89/09) [2010] ZACC 11 (18 June 2010) Media Summary.

⁴⁵ CER 2010 <https://cer.org.za/news/constitutional-court-confirms-unconstitutionality-of-parts-of-the-development-facilitation-act>.

country still functioned within this dual administrative system. The DFA was entirely repealed by the proclamation of *SPLUMA*,⁴⁶ though the implementation of *SPLUMA* came into operation on the 1st of July 2015.⁴⁷ The implementation of section 33(1) of *SPLUMA* gave practical effect to the Constitutional Court ruling which affected the whole country. This was the long-awaited proclamation and implementation of national legislation that established the municipality as the body of first instance for all land development applications⁴⁸ and has the authority to make subsequent decisions. This resolves the dual administrative system, and the complications as addressed in the ruling of the Constitutional Court. The period between the Constitutional Court ruling and the implementation of *SPLUMA* was a time anticipating replacement legislation for all municipal and provincial administrations.

The three-year time period, 2010-2013, was a period where the regulation of municipal planning was caught in a forced state awaiting the promulgation of legislation that would conclude the transition from the *DFA* to *SPLUMA*.⁴⁹ Land use planning administration and decision-making were still managed between the provincial government and the local government during this time, and thus was a fragmented system.⁵⁰ Administration of land use development applications of properties located *outside* the urban edge, would be managed and administered by the provincial government. Administration of land use development applications of properties located *within* the urban edge would typically be administered by the municipality.⁵¹ The exception to this dual system was of course the CoJ Metropolitan Municipality and the eThekweni Metropolitan Municipality, where only the municipality administered and decided on the planning applications. The Mpumalanga Provincial Government, specifically, had standardised application forms that relied on section 6(1), read with section 8(1)(a) of the

⁴⁶ *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* (CCT89/09) [2010] ZACC 11 (18 June 2010) Media Summary; Steyn and Van Wyk *Planning Law Casebook* 29.

⁴⁷ Proc 26 in GG 38828 of 27 May 2015 is a proclamation by the president that determines the date of implementation of *SPLUMA* in terms of s 61 of the Act.

⁴⁸ *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal* (CCT89/09) [2010] ZACC 11 (18 June 2010) Media Summary; CER 2010 <https://cer.org.za/news/constitutional-court-confirms-unconstitutionality-of-parts-of-the-development-facilitation-act>.

⁴⁹ *Albert Dykema v Arthur Pule Malebane and Bela-Bela Local Municipality* (CCT332/18) [2019] ZACC 33 (10 September 2019); Kleynhans 2024 *Interview*.

⁵⁰ Kleynhans 2024 *Interview*. Schoeman 2015 *Town and Regional Planning* 53; Schoeman 2017 *International Journal of Transport, Development and Integration* 183; Van Wyk and Oranje 2014 *Planning Theory* 356.

⁵¹ Kleynhans 2024 *Interview*.

Physical Planning Act 88 of 1967 and read with section 36 of the *Physical Planning Act* of 1991 to change the use of land within a controlled area.⁵² These applications had to comply with the general principles in Chapter 1 of the *DFA* and/or the *SDF* of the related local municipality. Township establishment applications made by the *Less Formal Township Establishment Act* 113 of 1991, were administered by the provincial government.⁵³ The transition between the administration of the local and provincial government developed into the *SPLUMA* framework that secures the land use administration under the local government.

The tangible long-anticipated change in planning legislation was presented in the Land Use Management Bill, published in 2008. This was followed by the Draft Spatial Planning and Land Use Management Bill in 2010, which developed into the Spatial Planning and Land Use Management Bill, 2012 and then effectively into *SPLUMA*. The administration from the provincial government in terms of land use planning was only transferred to municipalities, physically, after the implementation of *SPLUMA*. The registers held by the provincial government had to be processed for the provincial archives to release the physical records to municipalities, which had to agree to the receipt of the physical records. In the Province of Mpumalanga, this physical transfer formed part of the process of the development and establishment of the new *SPLUMA* wall-to-wall land use schemes. The physical records had to be incorporated into the new land use scheme register as required by *SPLUMA*.

The *DFA* was guided by development principles⁵⁴ as required by the 1996 *Constitution*.⁵⁵ After the *DFA* had been deemed unconstitutional, the development principles were still used to motivate development applications until *SPLUMA* was promulgated.⁵⁶ *SPLUMA* replaced the development principles with its own, but similar in principle, development principles as mentioned in section 2.3.1.⁵⁷

⁵² Mpumalanga Department of Co-operative Governance and Traditional Affairs *Applications*.

⁵³ Section 1 of the *Less Formal Township Establishment Act* 113 of 1991.

⁵⁴ Section 25(2)(c) of *SPLUMA*.

⁵⁵ Schoeman 2017 *International Journal of Transport, Development and Integration* 183.

⁵⁶ Schedule 3 of *SPLUMA* indicated the repealed laws; Steyn and Van Wyk *Planning Law Casebook* 29.

⁵⁷ Section 7 of *SPLUMA* indicates the development principles. Also see Laubscher *et al SPLUMA Practical Guide* 63-85 for a more detailed discussion on the development principles; s 3 of the *DFA* (specifically s 3(1)(c)(i-vii)) lists the

The *DFA* played a significant role in the development of the land use planning and development administration, in the re-thinking and structuring of administration as well as the advancement of an understanding of what land use planning was. The integration of the ordinances and the re-demarcated municipal areas also played a significant role in the development of land use planning and management system.

2.4 The provincial ordinances and the changing landscape of the provinces after the declaration/promulgation of the Constitution and eventual relationship with SPLUMA in its transition

The establishment of the nine provinces of South Africa had a significant influence on the development of the land use planning system as it is today. The formation of the provinces and the land use planning legislative background that was fundamentally influenced by the provincial legislation prompts a discussion of the history of land use planning legislation. Though the provincial ordinances from the previous dispensation directed land use planning and development within the urban edge or urban areas, the related applications were authorised by municipalities.⁵⁸ The national legislation related to land use planning was largely administered by the provincial government and was typically applicable to areas outside the urban edge.⁵⁹ Thus, a dual functioning land use planning and development administration. The previous dispensation's provincial boundaries and structure were established during 1910, when the Union of South Africa was established by the *South Africa Act* of 1909 that was an Act from the parliament of the United Kingdom. It united the four British colonies known as the Orange

development principles; Schoeman 2017 *International Journal of Transport, Development and Integration* 183.

⁵⁸ The *Town Planning and Townships Ordinance* 15 of 1986 establishes that the local authority prepares and administers the town planning scheme (today better known as land use scheme), noted that the scheme was purposed for a particular urban area (previous dispensation municipal structure). This Ordinance was valid for the Gauteng, Mpumalanga, Limpopo and North West provinces as explained below. The *Townships Ordinance* 9 of 1969 for the province of the Free State determined that the local authority is similarly responsible for the administration of the land use scheme, and township establishments would be submitted to the provincial government. Other ordinances mentioned in section 2.4 have similar structures and applications.

⁵⁹ The provincial government administered land use management on areas outside the urban edge in terms of legislation that include the *Less Formal Township Establishment Act* 113 of 1991 (repealed), the *Upgrading of Land Tenure Rights Act* 112 of 1991, *Physical Planning Act* 88 of 1967 (repealed), the *Physical Planning Act* 125 of 1991 (repealed), the *Advertising on Roads and Ribbon Development Act* 21 of 1940, the *Interim Protection of Informal Land Rights Act* 31 of 1996 (which was supposed to lapse after 12 months after promulgation), amongst other legislation.

River Colony, Transvaal, Natal and the Cape of Good Hope.⁶⁰ The colonies would become the provinces of the Union and then later the Republic of South Africa in 1961.⁶¹ The provinces were known as the Orange Free State, Transvaal, the Cape Province and Natal. Their demarcations remained until 1994.⁶² These provinces formed the foundation of planning legislation as per the provincial ordinances for the urban areas. As mentioned, the provincial ordinances were used for land use planning and development applications up until *SPLUMA* came into effect in 2015.⁶³ Long before *SPLUMA* was developed, the geographical grouping of these provinces was reconsidered.

The re-demarcation of provinces was established by the *Interim Constitution* of 1993, but founded in the *Constitution* of 1996⁶⁴ and indicates the nine provinces of South Africa: Eastern Cape, Free State, Gauteng, KwaZulu-Natal, Mpumalanga, Northern Cape, Northern Province, North West and the Western Cape, which replaced the four old provinces on which the planning ordinances had been based. The promulgation of *SPLUMA* intended to generate provincial legislation that would replace the previous ordinances.⁶⁵ However, this did not happen. The general result was that most municipalities were prompted to formulate *SPLUMA*-aligned municipal by-laws that would address the planning system as per *SPLUMA* and establish processes and procedures to accommodate the land use planning system. The nine provinces of the democratic government each had their respective relevant legislative and institutional context that represented the requirement that the whole territory of South Africa should be included in a municipality.⁶⁶ This included the incorporation of the four independent and self-governing states Transkei, Ciskei, Bophuthatswana and Venda into its administration after 1994. They were previously known as Gazankulu, KaNgwane, KwaNdebele, KwaZulu, Lebowa and QwaQwa. The mentioned administrative systems had to be integrated into municipalities and fell

⁶⁰ Devenish 2011 *Obiter* 108.

⁶¹ The *Republic of South Africa Constitution Act* 32 of 1961 constituted the Union into the Republic of South Africa, which was independent but constitutionally loyal to the Crown (United Kingdom). Pre-1994 planning legislation was also largely influenced by English planning legislation forms.

⁶² Devenish 2012 *Fundamina* 2.

⁶³ Bronstein 2015 *SALJ* 649.

⁶⁴ Schedule 1A of the *Constitution*.

⁶⁵ Van Wyk and Oranje 2014 *Planning Theory* 356-357. The intention and certainty of the promulgation of nine provincial spatial planning Acts in terms of *SPLUMA* are indicated here in 2014 for purposes of addressing spatial divisions of the apartheid regime and cultivating comprehensive approaches to land development in municipalities that include all areas within it.

⁶⁶ Section 151(1) of the *Constitution*.

under the authority of such municipalities.⁶⁷ That means that all land use planning and development decisions would be made by the respective municipality that they fell under. This caused difficulty at times within the administrations due to debates about authority in decision-making on land use matters. *SPLUMA* makes provision for and requires the representation of traditional councils within its decision-making processes.⁶⁸ The issue of land tenure will be discussed below – it relates to difficulty in the land use scheme and register as well as the processing of applications.

The consideration of the formation and inclusions of the provinces are important for the demarcation and reflection of the inclusivity of the wall-to-wall local municipal areas and its administration as it explains some of the considerations that are and should be included in the development of the land use management system.

The transitioning of the administrative systems per province is indicated below:⁶⁹

- The administrative areas that were integrated within the Mpumalanga Province include KaNgwane, which consisted of three administrative areas; the majority of KwaNdebele, which consisted of a total of three administrative areas; part of Transvaal Provincial Administration; and 20 municipalities. Mpumalanga transitioned to 20 municipal areas, that includes three district municipalities. Before *SPLUMA* systems, the *Town-Planning and Townships Ordinance* 15 of 1986 and the *Division of Land Ordinance* 20 of 1986 were generally used for planning applications.
- Gauteng Province had to integrate administrative systems of the Transvaal Provincial Administration as well as 26 municipalities. It transitioned to 11 municipalities, that included three metropolitan municipalities and two district municipalities. Before *SPLUMA*

⁶⁷ National Treasury 1999 <http://www.treasury.gov.za/publications/igfr/1999/chapters.pdf> (Chapter 1: Profile of the Provinces); the *Constitution of the Republic of South Africa* 200 of 1993 (the *Interim Constitution*); and the *Constitution*.

⁶⁸ Section 23(2) of *SPLUMA* provides that subject to s 81 of the *Local Government: Municipal Structures Act* 117 of 1998 and the *Traditional Leadership and Governance Framework Act* 41 of 2003, a municipality in the performance of its duties in terms of the land use management chapter, must allow the participation of traditional council.

⁶⁹ National Treasury 1999 <http://www.treasury.gov.za/publications/igfr/1999/chapters.pdf> (Chapter 1: Profile of the Provinces); Municipal Demarcation Board *Municipal Powers and Capacity Assessment* 2018 Mpumalanga; Stats SA 1991 *Population Census 1991* xvii-xxi.

systems came into effect, the *Town-Planning and Townships Ordinance* 15 of 1986 and the *Division of Land Ordinance* 20 of 1986 applied to this province. It established the *Gauteng Planning and Development Act* 3 of 2003, which repealed the ordinances.⁷⁰

- Limpopo Province included Venda; Lebowa, which consisted of 11 administrative areas; Gazankulu, which had six administrative areas; part of Transvaal Provincial Administration; and ten municipalities. Limpopo transitioned to 27 municipalities, which included five district municipalities. Before the *SPLUMA* system came into effect, the *Town Planning and Townships Ordinance* 15 of 1986 and the *Division of Land Ordinance* 20 of 1986 were generally used for planning applications.
- The North West Province included the administrations of the majority of Bophuthatswana; part of KwaNdebele; part of the Transvaal and Cape Provincial Administrations; and 15 municipalities. It transitioned to 22 municipalities, which included four district municipalities. Before *SPLUMA* systems came into effect, the *Town-Planning and Townships Ordinance* 15 of 1986 and the *Division of Land Ordinance* 20 of 1986 were generally used for planning applications.
- The Western Cape involved the integration of part of the Cape Provincial Administration and 41 municipalities. It transitioned to 30 municipalities, which include a metropolitan municipality and five district municipalities. The *Land Use Planning Ordinance* 15 of 1985 (*LUPO*) was relevant for the province and was repealed by the *Land Use Planning Act* 3 of 2014.⁷¹
- The Eastern Cape Province integrated the administration of Transkei; Ciskei; part of Cape Provincial Administration; and 41 municipalities. It transitioned to 39 municipalities, which included two metropolitan municipalities and six district municipalities. *LUPO* applied to the province and was repealed by the *Repeal of Local Government Laws Eastern Cape Act* 1 of 2020.⁷²
- The Northern Cape Province included the administration of part of the Cape Provincial Administration and 23 municipalities. It transitioned to 31 municipalities, that included five district municipalities. *LUPO* applied to the Province and was repealed by the *Northern Cape Planning and Development Act* 7 of 1998.⁷³

⁷⁰ Schedule to the *Gauteng Planning and Development Act* 3 of 2003.

⁷¹ Schedule to the *Land Use Planning Act* 3 of 2014.

⁷² Schedule to the *Repeal of Local Government Laws Eastern Cape Act* 1 of 2020.

⁷³ Schedule C to the *Northern Cape Planning and Development Act* 7 of 1998.

- The Free State Province integrated the administration of QwaQwa, which consisted of one administrative area; the Orange Free State Provincial Administration; part of Bophuthatswana; and 50 municipalities. It transitioned to 23 municipalities that included one metropolitan municipality and four district municipalities. The *Townships Ordinance* 9 of 1969 was relevant for this province.
- KwaZulu-Natal included the administration of KwaZulu, which consisted of 26 administrative areas; the Natal Provincial Administration; and 39 municipalities. It transitioned to 54 municipalities that included one metropolitan municipality and ten district municipalities. The *Town Planning Ordinance* 27 of 1949 applied⁷⁴ and was replaced by the *KwaZulu Natal Planning and Development Act* 6 of 2008⁷⁵ (which came in operation on 1 May 2010).⁷⁶ This Act was regarded as progressive at the time. It replaced the *Town Planning Ordinance* of 1949 and amendments to this ordinance.

The different administrative bodies that were integrated into the municipalities had different land ownership administrations.

2.5 The complication of land tenure and SPLUMA

Land is the common entity vested in all planning matters, specifically land use planning and development administration. Land ownership is protected under the *Constitution's* property clause.⁷⁷ Land use rights are directly linked to property. Land use rights are registered on a record held by municipalities as required by *SPLUMA* to keep a record of all amendments of the scheme. Land use planning and development applications are to be submitted by the owner of a property or a person or entity that represents the owner and/or have permission from the owner to apply.⁷⁸ This complicates the keeping of a record of amendments when different types of land tenure are present within a municipal area. It is further complicated by the consideration of applications in a system that firmly recognises ownership in terms of a title deed.

⁷⁴ Van Wyk 2013 *SAPL* 99.

⁷⁵ *KwaZulu-Natal Planning and Development Act* 6 of 2008; LexisNexis 2004 <https://www.ghostdigest.com/articles/kzn-planning-and-development-act/52030>.

⁷⁶ Van Wyk 2013 *SAPL* 99; Van Wyk *Planning Law* 38.

⁷⁷ Van Wyk *Planning Law* 187.

⁷⁸ Written legal record from the rightful owner is needed as proof. This includes affidavits, company resolutions, signed letters confirmed by a commissioner of oaths etc.

Land tenure was and still is a complicated issue that leaves people residing in some of the mentioned previous "homelands" or trust areas without security of tenure. The *Development Trust and Land Act* established the land administrative system for "permission to occupy" (PTO), which had its own administrative system.⁷⁹ A PTO in its integration with the strict title deed registration for ownership of land creates vulnerability for holders of these rights.⁸⁰ The *Communal Land Rights Act* 11 of 2004 (CLaRA)⁸¹ was intended to provide legally secure tenure and land use rights in the areas that did not have secure tenure in the form of title deeds and were and are mostly owned by the national government and to a smaller extent the provincial government. CLaRA was eventually eliminated in its entirety by the Constitutional Court.⁸² Other related legislation to accomplish more secure tenure or ownership included the *Upgrading of Land Tenure Rights Act* 112 of 1991 and the *Interim Protection of Informal Land Rights Act* 31 of 1996 (IPILRA). The *Upgrading of Land Tenure Rights Act* 112 of 1991 was intended to secure the ownership of certain rights and specifically assist in the transfer of ownership from the national or provincial government to the traditional authority. IPILRA was intended to protect people's land rights temporarily and provides the right to occupy, use and access land within the former homelands.⁸³ IPILRA did not have the effect it was purposed to have and secured rights for few.⁸⁴ This was/is a tedious process to transfer the land owned by the national or provincial government to local government in order to establish townships and register title deeds. The process is commonly referred to as the transfer of state land applications or processes. This process was administered and had to be approved by the Department of Rural Development and Land Reform (DRDLR) for many years. The applications were/are done in terms of IPILRA. After a normally long process, the land will be transferred to the municipality. The application to the DRDLR will be accompanied by a proposal for a township establishment together with its motivation, a site development plan, the needed resolutions and consent from the relevant community in terms of IPILRA and other

⁷⁹ Du Plessis "Traditional Leadership and Authority" 5.

⁸⁰ Du Plessis "Traditional Leadership and Authority" 6.

⁸¹ Van Wyk 2013 SAPL 100.

⁸² Clark and Luwaya 2017
https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commisioned_Report_on_Tenure_Reform_L_ARC.pdf 11.

⁸³ Custom Contested Date Unknown <https://www.customcontested.co.za/laws-and-policies/the-interim-protection-of-informal-land-right-act-ipilra/>.

⁸⁴ Clark and Luwaya 2017
https://www.parliament.gov.za/storage/app/media/Pages/2017/october/High_Level_Panel/Commissioned_Report_land/Commisioned_Report_on_Tenure_Reform_L_ARC.pdf 9.

necessary documents. The property to be transferred will not entail vast areas of land or farm portions. It will only transfer the area that is indicated on the proposed township establishment application, with a small border around the proposed development area. The related area will be subdivided from the original farm portions, and only that area transferred to a municipality. The transfer of state land does not happen as frequently as it should to enable registered individual ownership by title deed. The Dr JS Moroka Local Municipality in Mpumalanga does not own the land that their administrative building is on, for example. The land that is owned by the state that communities are living on and expressing land uses follows a system that is not easily integrated into the *SPLUMA* system. The land use register and the process of applications for these areas could be described as an experiment. There are no clear guidelines or institutional processes on how to address this other than the transfer of state land process. Other legislation that assisted in the transformation to the development of *SPLUMA* should be discussed briefly to consider the effort that went into the process of legislative development for a new land use planning system.

3 Land use schemes and transformation towards the *SPLUMA* system

3.1 *Town planning schemes: land use planning within the urban edge (urban areas)*

The land use scheme as known in terms of *SPLUMA*,⁸⁵ used to be termed "town planning schemes". Town planning schemes were typically proclaimed or officially declared in terms of the relevant provincial ordinance. The Land Use and Planning Regulations as per Government Notice R1888 of 1990 determined procedures for land use schemes.⁸⁶ The scheme itself would also be approved by the provincial government.⁸⁷ A typical example is the Nelspruit Town Planning Scheme of 1990 which was advertised as an amendment to the Nelspruit Town Planning Scheme 1/1952 in terms of the *Town Planning and Townships Ordinance* of 1965 by the Minister of Budget and Local Government House of Assembly.⁸⁸ The

⁸⁵ Section 24(1) of *SPLUMA* indicates the requirement for a single land use scheme for its entire area. S 25(1) indicates that this land use scheme must determine its use and development.

⁸⁶ Van Wyk 2013 *Southern African Public Law* 95.

⁸⁷ The Kinross Town Planning Scheme of 1980 had a clear stamp from the Director of the Local Government of the Provincial Administration and was signed by the director as a true copy.

⁸⁸ Gen N 290 in Transvaal PG 4662 of 14 February 1990 (Nelspruit Amendment Scheme 1/52).

Marloth Park Town Planning Scheme of 2000, for example, was promulgated under the provision of section 18 of the *Town Planning and Township Ordinance* 15 of 1986.⁸⁹ Municipalities would administer the land use and development applications submitted to them through their planning department.⁹⁰ Town planning schemes would only cover the area of a town within the urban edge, which could be seen as the boundary of a municipality. Town planning schemes were typically centred on urban areas (with an urban edge). However, it could be argued and should be acknowledged that the term "urban" may vary and may not necessarily be perceived as the same coherent concept or "idea" but is formulated through integrated levels and layers of informed thinking.⁹¹ It is a complex boundary that needs to be examined in a context. The administration of each urban area, or the previous dispensation's "town" or "city" that has its subsequent town planning scheme would typically involve their own processing of land use planning and development applications.

This means that usually each urban area would have its own administration for land use planning applications. Each administration would have planners and administrators managing the applications within the urban edge.

3.2 Subdivisions outside the urban edge and SPLUMA

Outside the urban edge, the subdivision as part of land use planning and development administration was applied for in terms of the *Subdivision of Agricultural Land Act* 70 of 1970 (SALA).⁹² This Act, which came into operation on 2 January 1971, regulated the subdivision for agricultural land before the implementation of *SPLUMA*. This Act was not repealed, although the government published an Act in 1998 that repealed the whole Act, but the Presidency did not publish the operational date for it. The reason for this was that there was no other legislation to replace *SALA*.⁹³ The Preservation

⁸⁹ This Ordinance was relevant for the provinces of Mpumalanga, Gauteng, Limpopo and the North-West, which together formed the Transvaal province from the previous dispensation.

⁹⁰ The planning department might be termed with differently titled names to each municipality as it is the municipality's choice how they refer to their planning department.

⁹¹ Steyn *Public Participation as a Cultural Determinant* 9-27.

⁹² The *Subdivision of Agricultural Land Act* 70 of 1970 (SALA), which came into operation on 2 January 1971, was used to subdivide all agricultural land before the implementation of *SPLUMA* but was not repealed (the government published an Act in 1998 that repealed the whole Act, but the Presidency never proclaimed the operational date).

⁹³ Ramothar, Marais and Coetzee 2021 <https://www.fasken.com/en/knowledge/2021/07/26-the-repeal-of-the-subdivision-of->

and Development of Agriculture Land Bill was introduced to the National Assembly in 2021 and it was purposed to replace SALA.⁹⁴ Currently, an application in terms of SPLUMA⁹⁵ is required to apply for any subdivision⁹⁶ via the Department of Agriculture, Land Reform and Rural Development, but specifically the Department of Agriculture. The permission of the Minister of the Department of Agriculture is still required when subdivisions on agricultural land are considered.⁹⁷ This department is still mandated to protect the subdivision of agricultural land⁹⁸ and prevent the fragmentation of agricultural land.⁹⁹ Similarly, the Department of Environment, Forestry and Fisheries is responsible for the protection of the environment in terms of the *National Environmental Management Act* 107 of 1998 (NEMA).¹⁰⁰

3.3 Land use schemes: wall-to-wall land use planning in urban and rural areas

Outside the urban edge, the provincial government managed the land use planning and development applications. This administration was largely based on the *Physical Planning Act* of 1967 and the *Physical Planning Act*

agricultural-land-act indicated that the question was raised as to why the Repeal Act was not implemented and the answer from the Department of Agriculture, Land Reform and Rural Development on the 11th of February 2020 was that there were no other legislation to replace it.

⁹⁴ Ramothar, Marais and Coetzee 2021 <https://www.fasken.com/en/knowledge/2021/07/26-the-repeal-of-the-subdivision-of-agricultural-land-act> indicated that the Preservation and Development of Agriculture Land Bill was introduced to the National Assembly on 22 April 2021 by the Minister of Agriculture, Land Reform and Rural Development where transitional arrangements were established.

⁹⁵ Section 35(4) read together with s 41(b) of SPLUMA allows for the subdivision of land (not restricted to agricultural land).

⁹⁶ Van Wyk *Planning Law* 335.

⁹⁷ Ramothar, Marais and Coetzee 2021 <https://www.fasken.com/en/knowledge/2021/07/26-the-repeal-of-the-subdivision-of-agricultural-land-act>.

⁹⁸ Ramothar, Marais and Coetzee 2021 <https://www.fasken.com/en/knowledge/2021/07/26-the-repeal-of-the-subdivision-of-agricultural-land-act> discusses SALA; Van Wyk *Planning Law* 336.

⁹⁹ Ramothar, Marais and Coetzee 2021 <https://www.fasken.com/en/knowledge/2021/07/26-the-repeal-of-the-subdivision-of-agricultural-land-act> discusses SALA.

¹⁰⁰ Schedules 1 and 2 of NEMA are of particular interest in the overlapping of planning applications that might affect the environment and relate to the management of the environment.

of 1991 related to a controlled area.¹⁰¹ The *Physical Planning Act* of 1967, which was national legislation, was purposed:

To promote co-ordinated physical planning and the utilisation of the Republic's resources and for those purposes to provide for control of the zoning and subdivision of land for industrial purposes and of the establishment or extension of factories, for the establishment of controlled areas, for restrictions upon the subdivision and use of land in controlled areas and for other matters incidental thereto.¹⁰²

The controlled areas mentioned are areas that are declared or established under section 5 of the *Physical Planning Act* as a controlled area or the disestablishment of a controlled area in a proclamation in the Government Gazette.¹⁰³ A significant example is the proclamation in the Government Gazette of the Province of Transvaal as a controlled area that was signed by the State President of the Republic of South Africa in 1969. This proclamation specifically excluded areas that had been established by the *Development Trust and Land Act* 18 of 1936 and any area located within a local authority and peri-urban areas.¹⁰⁴ The validity of the *Physical Planning Act* was questioned after the re-demarcation of municipalities. The re-demarcation of municipalities will be discussed in section 4 of this article.

The concern with the validity of the *Physical Planning Act* was that the structure of municipalities had been changed with section 151(1) of the *Constitution* of 1996. The *Constitution* explicitly indicates that municipalities (local government) must be established over the whole of South Africa.¹⁰⁵ This means that no area will fall outside a municipality. The Department of Land Affairs concluded that this Act would still be in operation, but not applicable to any urban area. It would still apply to all areas outside of urban areas.¹⁰⁶ This established that the administration of the provincial government in terms of land use planning and development which was still in operation before the implementation of *SPLUMA* would repeal this Act and implement wall-to-wall land use schemes.

¹⁰¹ The Mpumalanga Provincial Government Department of Co-operative Governance and Traditional Affairs' application form to change land use in a controlled area states the foundation of s 6(1) read with s 8(1)(a) of the *Physical Planning Act* 88 of 1967 read together with the *Physical Planning Act* of 1991.

¹⁰² The summary of the *Physical Planning Act* 88 of 1967.

¹⁰³ Section 5 of the *Physical Planning Act* of 1967.

¹⁰⁴ Schedule in Proc R20 in GG 2276 of 7 February 1969.

¹⁰⁵ McLachlan and Van Schoor *Letter from Chief State Law Adviser*.

¹⁰⁶ McLachlan and Van Schoor *Letter from Chief State Law Adviser*; Mpumalanga Department of Co-operative Governance and Traditional Affairs *Applications*.

The wall-to-wall land use schemes would implicate the land use planning and development administration of the provincial government and the administration of municipalities to reform into one administration under the authority of every municipality. This would have a significant impact on capacity and the need for capacity within municipalities to take over the provincial government administration. Apart from the converging provincial administration, the administration of the different urban areas already merged through the re-demarcation of municipalities. This implies that there would be more than one town planning scheme in the current *SPLUMA*'s single wall-to-wall land use scheme.¹⁰⁷ The administration of land use planning and development increased significantly within municipalities. They would be responsible for the margining of the different urban areas within the extended geographical wall-to-wall municipal area. Each municipality will also be responsible for the administration of the areas outside the urban edge that the provincial government administers. Was there careful consideration given as to the needed capacity for this transition? Could the same administration that managed a single urban area have the capacity to administer multiple urban areas as well as the areas outside of the urban edge? How much consideration was given to the internal administration system and the needed capacity to successfully manage the first comprehensive land use administration?

Municipalities were under pressure after the 1st of July 2015 to comply with *SPLUMA*. The provincial governments at this point already anticipated the need for assistance to municipalities to align their administration with *SPLUMA*.¹⁰⁸ Municipalities would work from a municipal readiness report. Specifically in the Province of Mpumalanga, for example, the provincial Department of Rural Development and Land Reform assisted with and monitored the establishment of the MPTs,¹⁰⁹ developing the necessary Spatial Planning and Land Use Management By-law and accompanying tariffs for applications. The provincial Department of Co-operative Governance and Traditional Affairs was part of the supportive structure for municipalities to transition to *SPLUMA* compliance. The provincial department facilitated a generic draft by-law, developed by an appointed service provider.¹¹⁰ The municipalities had to manage their service

¹⁰⁷ Section 24(1) of *SPLUMA*.

¹⁰⁸ De Visser 2009 *Commonwealth Journal of Local Government* 13. This supportive role of the provincial government that relates to supervision forms part of its institutional role towards a municipality.

¹⁰⁹ Section 35(1) of *SPLUMA* requires the establishment of an MPT to determine land use and development applications.

¹¹⁰ The generic by-law was titled "Spatial Planning and Land Use Management By-law".

providers to adjust this generic by-law according to their respective contexts if they chose to use it. These by-laws were proclaimed or officially declared in the Government Gazette at a very high cost.¹¹¹ In the Province of Mpumalanga a few of the related *SPLUMA* by-laws promulgated were found to be unconstitutional in that it had not been authorised by section 156 read with Part B of Schedule 4 of the *Constitution* and contradicted section 118 of the *Municipal Systems Act*.¹¹² The by-law typically entailed the establishment of the MPT, land use planning and development application procedures, appeal procedures, the land use scheme, the spatial development framework, charges for engineering services and more contextual arrangements. In other words, the by-law contextualised the spatial planning and land use management system for the area.

3.3.1 *SPLUMA* section 24(1) and the wall-to-wall land use schemes

One of the most significant differences between a *SPLUMA*-compliant wall-to-wall land use scheme and the previous "town planning schemes" could be said to be the area covered and the nature of the area covered. Section 24(1) of *SPLUMA* indicates that a land use scheme should be developed that covers the entire municipal area. This requires each municipality to develop a wall-to-wall land use scheme that includes all urban areas, rural areas, agricultural land, previously disadvantaged areas and traditional authorities. One should note that in any of the more current land use schemes, it would indicate within the document that it represents the accumulation and integration of the relevant previous town planning schemes. This includes all areas under previous land use planning and development administrations. This integration of administration is complicated and the "how to" integration of the land use planning and development administration was left to the municipality. This was not just administrative integration, but other complications such as different ways of land ownership were present in many municipalities. The implications of processing planning applications and applying this on the land use register were left to the resolution of municipalities.

Municipalities would make decisions on development applications based on the urban edge and the location of the proposed development in terms of it.

¹¹¹ The Government Printing Works charged R1002.98 per page in 2015 for proclamations. A by-law would typically consist of approximately 90 pages.

¹¹² De Kock 2022 <https://www.snymans.com/advice/spluma-in-mpumalanga-the-saga-continues>. The Middelburg (Steve Tshwete Local Municipality), Emalahleni and Kinross Local Municipalities by-laws were found to be unconstitutional in 2021.

The urban edge is not a legislative line and has the nature of a policy,¹¹³ much like the nature of a SDF; though an SDF is legally required, it is also not a legislative document, but a policy and integrated principles. Typically, and historically, the land use scheme would cover the area within the urban edge and any application outside of it, for example a township establishment, and would then amend and expand the current land use scheme – and broaden the service delivery area of the municipality. The urban edge was and is subject to the discretion of the related municipality.¹¹⁴ The change of boundaries of municipalities from the urban edge to wall-to-wall municipalities, played a major role in the change of the land use planning and development administrative system.

4 Municipal boundaries and the transformation of local government in the light of the *SPLUMA* system

4.1 *The comprehensive land use planning system vested in *SPLUMA* section 33(1) – the significance of the geographical municipal structure*

The role of the municipality has been established in its authority over the processing and decision-making of land use planning and development applications. Section 33(1) of *SPLUMA* establishes the municipality as the body of first instance for land use planning and development applications within its vicinity.¹¹⁵ This, considering that all land within South Africa falls within a municipality as established by the *Constitution* and the extent of the wall-to-wall land use scheme, creates an unparalleled comprehensive administrative system in terms of land use planning and development. The land use planning and development administration of rural and agricultural areas was moved from the provincial administration to the municipal administration.¹¹⁶ The administration was added to the system that includes all urban areas within the municipal area. This kind of comprehensive single system instituted by *SPLUMA*¹¹⁷ has no previous process to compare it with, creating a new territory for administration and a question for the needed

¹¹³ Cilliers and Schoeman "Urban Development Boundary" 87; Van Wyk *Planning Law* 239.

¹¹⁴ Van Wyk *Planning Law* 238-239 explains the complex term "urban edge".

¹¹⁵ Laubscher *et al SPLUMA Practical Guide* 183-185. After the submission of the land use and land development applications to the municipality, it is considered by the MPT (s 35(1)) or the appointed municipal official (s 35(2)).

¹¹⁶ De Visser and Poswa 2019 *PELJ* 1.

¹¹⁷ *SPLUMA* was promulgated on the 5th of August 2013 and commenced on the 1st of July 2015 (Proc 26 in GG 38828 of 27 May 2015). The Regulations of *SPLUMA* was published in GN R239 in GG 38594 of 23 March 2015.

capacity. The advancements of the government to establish this system have been long in coming and the focus was on establishing the necessary legislation. It is understandable that the considerations for capacity for this system did not enjoy the needed official administrative considerations. It was an onerous and tremendous task to produce framework legislation that could cover and address a new land use planning and development system, while addressing the historical legislation of this system, without interrupting development. Municipalities frequently are criticised for the slow processing of applications or not enforcing land use practices according to the schemes. At times the mentioned lack of assessment that was initially necessary to address the administrative system is at play. The responsibility of specifically smaller municipalities is tremendous to maintain and administer the land use planning and development system. The comprehensive system is purposed for a significantly larger administrative system and should be equipped with more professional planners and supportive staff.

4.1.1 The Constitution, the Municipal Demarcation Act and the wall-to-wall municipalities in the light of SPLUMA

The *Constitution* of 1996 established municipalities as an important sphere of government.¹¹⁸ It required that the municipal areas should include rural and urban areas¹¹⁹ covering the entire country resulting in the current wall-to-wall municipalities. The promulgation of the *Local Government: Municipal Demarcation Act* 27 of 1998 provided the platform for the structuring of the boundaries or demarcation of municipalities.¹²⁰ The Act¹²¹ required an appointed board to determine or change municipal boundaries in terms of other related legislation and Chapter 7 of the *Constitution*¹²² that prescribe the framework for local government.¹²³ During the year 2000 the municipal boundaries were re-demarcated. The transitional local authorities failed to integrate rural and urban areas in some cases, because of certain disputes as well as issues with provincial boundaries. This necessitated the reconsideration and change of the criteria for demarcating municipal areas.

¹¹⁸ De Visser 2009 *Commonwealth Journal of Local Government* 9.

¹¹⁹ Jeeva and Cilliers 2021 *Town and Regional Planning* 83.

¹²⁰ Jeeva and Cilliers 2021 *Town and Regional Planning* 83 provides a table of the necessary demarcation criteria as per ss 24 and 25 of the *Local Government: Municipal Demarcation Act* 27 of 1998. The reference also explains the inconsistencies of previous attempts to the demarcation of municipalities.

¹²¹ Sections 1-5 of the *Local Government: Municipal Demarcation Act* 27 of 1998 indicates the required establishment, status, function and powers of the Municipal Demarcation Board.

¹²² Section 4 of the *Local Government: Municipal Demarcation Act* 27 of 1998.

¹²³ Sections 151-164 of the *Constitution*.

Various changes were made between 1993 and 2020, with significant re-demarcation during 2011 and 2020¹²⁴ and boundary changes were made over a period of 22 years.¹²⁵ The number of municipalities changed from 1262 municipalities in 1993 to 257 municipalities in 2020, which absorbed 1262 previous municipal areas,¹²⁶ creating new challenges for municipal administration and land use management. In effect, the municipalities changed from being just within the urban edge to wall-to-wall municipalities.¹²⁷ This coincided with the new system of local government.¹²⁸ The restructured wall-to-wall municipalities extended the municipal area significantly from its historical structure and included all urban areas, farmland or agricultural areas, any previously disadvantaged areas as well as traditional areas.¹²⁹

The structure of the re-demarcated municipalities was echoed in *SPLUMA*. *SPLUMA* in its definition of a municipality was in line with the 2000 to 2006¹³⁰ re-demarcation of municipal areas that relates to being wall-to-wall municipalities. Municipalities that stretched planning beyond the previous traditional municipal boundaries, were levelled with the urban edge and included all areas of new responsibility extended to farmland and traditional areas.¹³¹

The inclusion of all areas within a municipal area and within a comprehensive land use scheme and subsequent land use planning and development system requires a practical example.

5 Practical considerations of the implementation of *SPLUMA*

It would be useful to consider a municipality as an example of what a current wall-to-wall land use scheme will include and what it previously would exclude. A diversity of areas could be found in the integration and

¹²⁴ Jeeva and Cilliers 2021 *Town and Regional Planning* 87-89 indicate that these changes were made to redefine administrative regions within the country in line with the *Constitution* and redefinition of administrative areas.

¹²⁵ Jeeva and Cilliers 2021 *Town and Regional Planning* 88 refers to local boundaries.

¹²⁶ Jeeva and Cilliers 2021 *Town and Regional Planning* 87; Sikhakane and Reddy 2009 *Administratio Publica* 234.

¹²⁷ Forbes *Introduction to Municipal Planning* 5.

¹²⁸ De Visser 2009 *Commonwealth Journal of Local Government* 10.

¹²⁹ Forbes *Introduction to Municipal Planning* 5; De Visser 2009 *Commonwealth Journal of Local Government* 10. The traditional areas to be included in the municipality refers to the areas divided according to the *Natives Land Act* 27 of 1913 and the *Development Trust and Land Act* 18 of 1936.

¹³⁰ Jeeva and Cilliers 2021 *Town and Regional Planning* 87.

¹³¹ Forbes *Introduction to Municipal Planning* 5.

compilation of the current Nkomazi Local Municipal Land Use Scheme. The Nkomazi Municipality is located within the Mpumalanga Province, bordering Eswatini, Mozambique and including parts of the Kruger National Park. The previous dispensation's "town planning schemes" that were promulgated in terms of the old provincial ordinance¹³² includes the Greater Malelane Town Planning Scheme (1997), the Komatipoort Town Planning Scheme (1992), and the Marloth Park Town Planning Scheme (2000). These are now included in the *SPLUMA* wall-to-wall land use scheme. The mentioned schemes were structured around the previous dispensation's consideration of a municipal area that were related to certain urban areas only. Hectorspruit, Kaapmuiden, Kamaqhekeza, Tonga and Kamhlushwa could also arguably be regarded as urban or developed areas, but did not have schemes previously. It is worth mentioning the complexity of the scheme of Marloth Park as it was regarded as a holiday township with a nature conservation status. Administratively this is a complex challenge as to the record-keeping and implementation of land use rights. The Scheme also includes the traditional authorities within the municipal area that formed part of the KwaNgwane "homeland" area in the previous dispensation. The inclusive and integrated traditional authorities within the scheme are the Mlambo Tribal Authority, Hhoyi Tribal Authority, Siboshwa Tribal Authority, Kwa-Lugedlane Tribal Authority, Mawewe Tribal Authority, Matsamo Tribal Authority, Mhlaba Tribal Authority and the Lomshiyo Tribal Authority. The current *SPLUMA*-aligned scheme also includes a large section of the Kruger National Park, as it falls within the demarcated municipal boundary, as well as other conservation areas. The scheme is also inclusive of the potential Nkomazi Special Economic Zone (SEZ) as driven by the Mpumalanga Economic Growth Strategy (MEGA) and other provincial resources that have been in the pipeline for several years. The Lebombo Border Post is also included in the scheme, which would previously have been under the administration of the Province. The scheme also provides for the sugar mills within the municipal boundary owned by RCL Foods. The diverse land uses with different land use rights as well as land tenure challenges are included in the *SPLUMA*-compliant land use scheme, whereas in the previous dispensation there would only be schemes for this area that covered the three mentioned towns and excluded the areas in-between and beyond. Considering the mentioned area and what is included in the *SPLUMA* wall-to-wall land use scheme, the complexity of the administration of the scheme

¹³² *Town-planning and Townships Ordinance* no.15 of 1986 applied to the Mpumalanga Province.

can be envisaged. It will require an extraordinary administrative support framework to be able to be made to function efficiently and effectively.

6 Conclusion

The changing landscape of the land use planning and development administration in terms of *SPLUMA* after its implementation on the 1st of July 2015 had a significant practical impact on how land use planning and management are conducted in South Africa. This contribution identified the following as the main considerations:

- 6.1 Broadened scope of responsibility: Section 33(1) of *SPLUMA* effectively broadens the responsibility of municipalities in South Africa. It mandates them to include all areas, irrespective of their characteristics or utilisation, within a single land use scheme. Historically the current vast municipal area would include more than one or several land use schemes, one for each urban area. This requirement ensures the responsibilities of municipalities now extend to diverse land use types, from traditional lands to national parks.
- 6.2 Increased administrative burden and capacity building: The broadened scope under *SPLUMA* significantly enhances the administrative duties of municipalities. They are now tasked with the development and administration of comprehensive land use schemes. There were no official constructive processes to evaluate and determine capacity to facilitate the expanded responsibilities of municipalities. To efficiently handle this expanded responsibility, municipalities need to build capacity, potentially employing more professional planners and establishing new administrative systems for effective record-keeping and land use application management.
- 6.3 Potential risks of administrative fatigue and obstructions: If municipalities are not assisted in the evaluation of the needed capacity to effectively and efficiently administer the land use planning and development applications, it could have a negative impact on the overall planning and development processes. Inadequate administrative structures could lead to inefficiencies in the administration of planning and its applications, ultimately hindering local development and land use management.
- 6.4 Land use planning and development applications and land tenure: Land ownership is crucial in the consideration of planning and

development applications. The current system still requires the owners of land to provide permission to submit any land use planning and development application. Land ownership is still indicated by means of a title deed. This creates significant difficulties in the possible processing of applications. The previous "homelands" are predominantly still registered to the ownership of the government. This implies that the people with the permission to occupy the land do not have official ownership, and thus it means that municipalities must find a way to legally accommodate the people living on government owned land.

- 6.5 The land use register as required by *SPLUMA* is at risk: The difficulty in land ownership and the capacity issue within administration as indicated above in paragraphs 6.1, 6.2 and 6.3 poses a valid concern in the maintenance and credibility of the land use register.

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CER	Centre for Environmental Rights
CLaRA	Communal Land Rights Act 11 of 2004
CoJ	City of Johannesburg Metropolitan Municipality
DRDLR	Department of Rural Development and Land Reform
IPILRA	Interim Protection of Informal Land Rights Act 31 of 1996
LUPO	Land Use Planning Ordinance 15 of 1985
MPT	Municipal Planning Tribunal
NEMA	National Environmental Management Act 107 of 1998
PELJ	Potchefstroom Electronic Law Journal
PTO	permission to occupy
SALA	Subdivision of Agricultural Land Act 70 of 1970
SALJ	South African Law Journal
SAPL	Southern African Public Law
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act 16 of 2013