Inconsistencies in National and Provincial Legislation and their Impact on Municipal Planning Processes and Service Delivery

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Thesis accepted in fulfilment of the requirements for the degree *Doctor of Philosophy in Science with Urban and Regional Planning* at the North-West University

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Graduation May 2020

25684906

ABSTRACT

The architects of apartheid deliberately used legislation and urban and regional planning to perpetuate segregation and inequalities within all spatial planning systems in South Africa. Now that South Africa knows better after the democratisation in 1994, it must decisively use legislation and registered regional planners to redress the imbalance of the past ensuring municipal planning is recognised as the core function with strategic intelligence to deal with land reform, spatial planning, land development, land use management, and service delivery issues. Municipal planning is highly regulated. The transition from apartheid to a constitution democracy in 1994 resulted in the formulation of the current Constitution of the Republic of South Africa and other pieces of legislation and policies. Although the formulation of pieces of legislation was intended to fast track development and to rectify the imbalances of the past in so far as spatial planning and land use management is concerned, in practice, there is a slow pace in spatial transformation. The transformative agenda of the democratic government seeks to build a capable state whereby issues of spatial planning, land use management, provision of housing, infrastructure, job creation, and improved access to basic services are at the heart of rectifying the ills created by the apartheid planning.

While government passed legislation, such inadvertently created a situation whereby pre-1994 legislation existed parallel to post-1994 legislation. Even though some of the post-1994 legislation repealed few of the pre-1994 legislation, to date there are pre-1994 legislation that regulate and have an impact on municipal planning that are still applicable guiding how government addresses and processes land development applications. There are also challenges that have been created by the lack of comprehensive law reform on legislation framework regulating and impacting on municipal planning. These challenges include duplications, and some inconsistencies, in spatial planning and development requirements and processes. There are delays associated with satisfying authorisation requirements as provided for by multiple pieces of legislation. Such delays have deprived both the state and investors financial gains necessary to grow the economy, creating jobs and ultimately rendering much-needed services and housing provisions to communities. Lack of consistent law reform has created dysfunctionality and uncertainties in spatial planning, land development and land use management.

The study was piloted in three metropolitan municipalities in Gauteng (namely City of Johannesburg, City of Tshwane and City of Ekurhuleni). Participants were selected in the three metropolitan municipalities and questioners as well as interviews were conducted. The participants identified the slow pace of structured land reform as a challenge that stalls development and economic growth of the country. As a result, this shows the three piloted metropolitan municipalities in Gauteng are not to be immune to the ramifications of land reform challenges whereby the disadvantaged black majority communities still do not have the benefit of land tenure security. Through the mixed-method

research methodology, a qualitative approach was chosen to be appropriate in gaining insight on municipal planning employed by the three metropolitan municipalities. Furthermore, observation and cross-case analysis were used to understand and compare data collected from various sources. The findings indicated the need for a comprehensive law reform exercise to be undertaken, to assess pieces of legislation that needed to be repealed or harmonised. Where legislation provides similar authorisation processes, such processes can be aligned or integrated. Furthermore, the study indicated the need to have land reform undertaken as part of municipal planning as municipalities are the only sphere designed to have the intelligence to implement and have the advantage of being closer to the communities. Thus, municipal planning, specifically the spatial planning system, land use management system and land administration system will achieve land reform outcomes. The 'rules of the game' for formal land reform in terms of the amendment of section 25 of the Constitution for expropriation of land without compensation is in the process of formulation and will create further challenges adding to the existing inconsistencies within land use management in addressing the spatial planning realities (land use and spatial planning) and challenges of service delivery.

Keywords: *law reform, spatial planning, land development, land use management, land administration, municipal planning, service delivery, land reform, integrated infrastructure provision plan, coordination*.

PREFACE AND ACKNOWLEDGEMENTS

As life brings challenges, equally it brings opportunities. This is where the universe delivers a balanced scale to all creation and provides adequate time for every activity under the sun.

I'm grateful and honoured that Prof Carel Schoeman and Adv. M. Schoeman set aside time to mentor and guide me throughout the research process.

To all participants, my gratitude may seem inadequate. Please let it be known that because of your selfless help, I'm deemed worthy to be called a Doctor of Philosophy graduate.

Lastly, to my awesome family, I will always be grateful and humbled. Please let it be known that no good deed goes unnoticed.

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LIST OF ABBREVIATIONS AND ACRONYMS

BEPP	Built Environment Performance Plan
COE	City of Ekurhuleni
DAFF	Department of Agriculture, Forestry and Fisheries
DEA	Department of Environmental Affairs
DEAT	Department of Environmental Affairs and Tourism
DFA	Development Facilitation Act
DPME	Department of Planning Monitoring and Evaluation
DRDLR	Department of Rural Development and Land Reform
GIS	Geographic Information System
IDP	Integrated Development Plan
IUDF	Integrated Urban Development Framework
LUPO	Land Use Planning Ordinance
MPRDA	Mineral and Petroleum Resources Development Act
MSA	Municipal Systems Act
MSCOA	Municipal Standard Chart of Accounts
NDP	National Development Plan
PPA	Planning Profession Act
RDP	Reconstruction and Development Programme
RSA	Republic of South Africa
SACPLAN	South African Council for Planners
SAPS	South African Police Service
SALGA	South African Local Government Association
SAPI	South African Planning Institute
SAPOA	South African Property Owners Association
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act

CHAPTER 1: BACKGROUND AND ORIENTATION

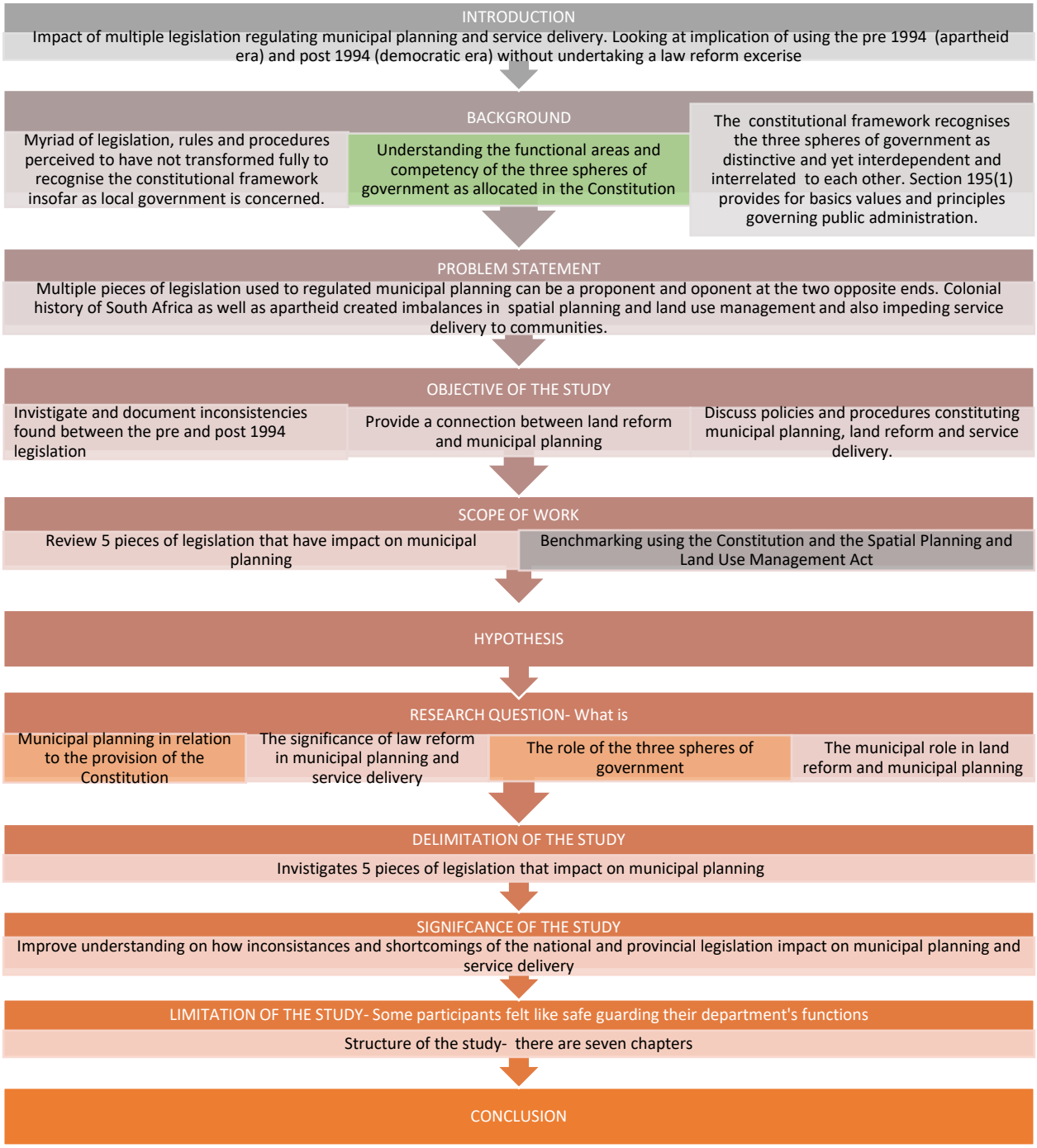


Figure 1.1: Structure of Chapter 1

Source: Own construction (2019)

1.1 INTRODUCTION

The Freedom Charter (1955), which formed the basis of the compilation of the Reconstruction and Development Programme (RDP) in 1994, and subsequently the Constitution of the Republic of South Africa (1996), acknowledged the urgency associated with building and developing a democratic country. The Freedom Charter (1955) stated:

> *It had become apparent that the realisation of the vision and commitment towards a democratic country rested on the restructuring of government as an institution as well as the distribution of powers associated with such an obligation.*

Former President Nelson Mandela (1994) said:

> *The new status which we assume in South African society, carries with it an immense responsibility to establish clean, efficient and transparent government: a government that enjoys the confidence of the people because it works with them and cares about their plight; a government that will never subject any section of the population of our country to the hurt and humiliation which generations of blacks have known.*
>
> *The challenge before all of us is therefore to create conditions which begin to transform their conditions of living and give them new hope of a better future. This is the philosophy behind the RDP.*

To achieve the objective of the Freedom Charter and the RDP, various pieces of legislation were promulgated to realise the reconstruction, transformation and development agenda of the democratic government. The process to develop legislation never included a comprehensive law reform exercise. As a result, new pieces of legislation were developed on top of existing legislation, including the Spatial Planning and Land Use Management Act (SPLUMA) (16 of 2013).

President Ramaphosa (2018) said:

> *We must consider that the failure of the land issue in a just equitable manner, will threaten the stability of our democratic nation. Access to land is a fundamental right of citizenship. It does not just empower communities and workers, it enhances food security, especially for people in the rural area. Despite a comprehensive land reform programme, we have not made significant progress on this issue. Most of this country's land remains in the hands of a few people in our country.*

The RDP (1994:8) mentioned that the legacy of apartheid cannot be overcome with piecemeal and uncoordinated policies. After 24 years of democratic government, the lack of legislation review and land reform have proved to be negatively associated with land affairs, posing another quandary in the effective implementation of the National Development Plan (NDP), as well as delivering services to local communities. The NDP serves as a compass to direct and reconcile deficiencies associated with planning, development, competitiveness, monitoring and evaluation

of the growth and progressiveness of the country. From the researcher's point of view, the NDP can be seen as an advanced plan augmenting the RDP as Chipkin (2002:59) states that the RDP envisaged a transformed state apparatus that would initiate and coordinate development and economic growth through public investment in social infrastructural goods. Following Chipkin's submission, the NDP is a trailblazing apparatus to integrate planning, development and land use management systems necessary to achieve spatial, economic and social transformation.

Spatial, economic and social transformation can only be fully realised when land reform issues are holistically addressed. Law reform and land reform are mutually inclusive. The implementation of government laws takes place in municipal space. Municipalities, through various systems, translate government laws into programmes and projects associated with service delivery. It becomes necessary to determine the impact that multiple pieces of legislation have on the ability for a municipality to discharge municipal planning as its function, as well as investigating how land reform can accelerate structured service delivery.

The title of this research places national and provincial pieces of legislation that are used to regulate various land uses in the spotlight and questions their applicability in light of the role and responsibility of municipalities in municipal planning and service delivery. The application, and to a degree the interpretation, of the national and provincial pieces of legislation is found to be inadequate due to the reality that laws and associate processes have not been transformed and harmonised or rationalised to cater for a seamless approach toward service delivery, growth and development in a manner consistent with the new constitutional mandate for local government.

Local government finds itself governing through multiple pieces of legislation, some inherited from the previous regime, and some developed during the current democratic period. Given the transition in government, and the fact that South Africa is a developmental state, local government becomes the vehicle to:

- implement land reform initiatives;
- configure the distorted spatial forms;
- manage competing land uses;
- advance social development, economic growth, and infrastructure provision; and
- strengthen institutional arrangements within government and the private sector.

Understanding the impact of multiple pieces of legislation on municipal planning and identifying any inconsistencies, assisted in determining the logic and trend of constantly introducing new legislation when there is development or performance challenges encountered. The study explored the link between inconsistencies in legislation and the inability of municipalities to fully

perform their constitutional duties dealing with land reform, municipal planning and service delivery

To achieve the above, a complete paradigm shift in planning procedures needs to be introduced to all lawmakers in the national and provincial sphere of government. Such change must start with understanding the true need and intention of each existing piece of legislation, and then, based on the findings, undertake a legislative reform process in order to harmonise pieces of legislation governing municipal planning. Such change will ensure that the three spheres of government achieve rationalised rules, processes and requirements governing municipal planning and service delivery.

1.2 BACKGOUND

The number of pieces of legislation developed since 1994 shows that the South African legislative framework has evolved. This evolution is attributed to the change in government, separating the democratic government from the apartheid era. The start of the democratic government marked the new era of restoration, filled with endless opportunities to grow the economy and redressing spatial imbalances, requiring the development of legislation that is progressive and inclusive.

Through the democratic government South Africa became a sovereign and democratic state founded on the supremacy of the Constitution and the rule of law. With the Constitution, three government spheres – national, provincial and local government – were formed to fulfil the new mandate of the government. Each government sphere was given a legislative and executive mandate as guided by the Constitution. Significant to the formation of the government sphere, is the provision of Chapter 3 of the Constitution that binds all three spheres of government in fulfilling their constitutional mandate. In terms of Chapter 3 of the Constitution, government comprises national, provincial and local government spheres which are distinctive, interdependent and interrelated. Notwithstanding this provision for separate and distinct spheres, government institutions are expected to work together collaboratively to ensure that policies and programmes are designed, implemented and monitored in an effective manner (Public Service Commission, 2010:8 &33).

Additionally, section 195(1) of the Constitution provides for basic values and principles governing public administration, and requires the three spheres to provide effective, transparent, accountable and coherent government for the Republic of South Africa (RSA) as a whole. The Constitution, under Schedule 4 and 5, provides for functional areas of concurrent national and provincial legislative competence. Additionally, local government matters under Schedule 4, read

with section 155(6) (a) and (7) of the Constitution, provide for a transformative agenda insofar as the planning system is employed in South Africa.

In view of the above, this study aims to understand how the legislative powers of the national and provincial sphere has impacted the local government sphere in municipal planning and service delivery. The perceived impact is based on the fact that the formation of government spheres to suite the democratic agenda, took place without undertaking a legislative reform exercise aimed at ensuring harmony between old-order legislation and the new democratically-based legislation.

The absence of legislative reform or harmonisation of legislation that is essential in municipal planning, becomes the core discussion in this study as inconsistencies in legislation are likely to exist where the new planning system is regulated by legislation supporting contradicting ideologies. The inconsistencies in legislation, both pre- and post-1994, are examined using the provisions of the Constitution as the core foundation. The Constitution is read together with SPLUMA as the key piece of legislation regulating spatial planning, land development and land use management. The Municipal Structures Act (117 of 1998), Municipal Systems Act (32 of 2000), Municipal Property Rates Act (6 of 2004) and Municipal Finance Management Act (56 of 2003), are pieces of legislation that play an instrumental role in guiding municipal planning processes. It becomes important to note that municipal planning is intertwined with the legislation, as mentioned above.

This study is necessitated by the lessons learned during the drafting and participation of SPLUMA, which fell under section 76(b) of the Constitution as it affected provinces, requiring full participation of the National Council of Provinces in order to be passed by the National Assembly and assented by the president of the RSA. The process leading to the assertion of SPLUMA revealed several challenges, including:

- A myriad of legislation, rules and procedures perceived to have not transformed fully to recognise the constitutional framework insofar as local government is concerned.
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function.
- Existing deficiencies in the interpretation of legislation insofar as competency of local government is concerned, resulting in the unintended creation of legislation superiority and hierarchy.

The above-mentioned challenges called for an understanding of the functional areas and competency of each sphere of government as allocated in the Constitution; hence, the study was of particular importance as each of the three spheres of government has a legitimate role to play in regulating land use and spatial planning (Berrisford & De Visser, 2012:4).

1.3 PROBLEM STATEMENT

The myriad pieces of legislation employed by government globally to regulate municipal planning, urban and regional planning, can easily become the proponent and the opponent at two opposite ends. The opponent end can be that too much regulation creates uncertainties and conflicting provisions that can be difficult to implement and monitor. The proponent end may be seen to bring the necessary control and balance in spatial planning, land use, land development and environmental management.

Given South Africa's colonial history, which will be discussed in detail under the history of planning in Chapter 2, adopted the both European and American planning systems. Watson (2014:99-100) rationalises the dual planning system as the result of intellectuals who led the field in planning theory. She states that intellectuals in the field of planning have lived and worked in the Euro-American regions and, consciously or not have produced ideas about planning that are followed by many African countries, including South Africa. With the reformation of South Africa's government, the three spheres of government since 1995 have been characterised by confusion as to where the various elements of the legislative and executive authority for land use and spatial planning reside. The Constitution introduced and allocated municipal planning as the function of local government; however, the Constitution did not clarify matters, leaving the three spheres to puzzle over the meaning and authority of municipal planning as a function. Hence, the Constitutional Court battles among the spheres of government over the function of municipal planning. The Constitutional Court judgement of June 2010 conceded that the term 'municipal planning' is not defined in the Constitution, however, municipal planning is regarded as the most detailed level of planning as it deals with all aspects at a district and local municipal level (Umhlaba Consulting Group, 2013:2). In addition, the Integrated Development Plan Guidepack (IDP, 2001:20) contended that municipalities, as the sphere of government that is closest to the people, are responsible for municipal planning and service delivery. This places municipalities at the forefront of spatial restructuring, social and economic development. Municipal performance and contribution to service delivery relies on national and provincial legislation as provided for in section 151(3) of the Constitution, stating that "a municipality has a right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation".

In light of the above, municipalities must consider multiple pieces of legislation in their municipal planning, decision-making and budgeting processes in order to meet the democratic agenda of government. The irony is that local government must realise the democratic agenda, while using

laws designed explicitly to form part of the apartheid scheme for a racially segregated and unequal South Africa (Cities Network 2014:9). It should be noted that over and above the pre-1994 legislation, there are post-1994 acts and regulations that are operational alongside with legislation seen as perpetuators of apartheid as mentioned by Cities Network (2014). Legislation that serves a different era can lose its relevance and create inconsistencies between national, provincial and local government legislation. Thus, the need arises to assess and determine the relevance of applicable legislation in readdressing the imbalances of the past while looking at spatial, social and economic transformation whereby municipal planning processes and service delivery will be a focal point for growth and development.

1.4 OBJECTIVES OF THE STUDY

The key objectives of this study were to:

1) investigate and document inconsistencies found in both the pre- and post-1994 legislation that have an impact on municipal planning and service delivery;
2) discuss legislation, policies and procedures constituting municipal planning, and land reform;
3) provide recommendations regarding the interventions necessary to rationalise and harmonise pieces of legislation that create inconsistencies and hinders service delivery;
4) provide a connection between land reform and municipal planning; and
5) propose recommendations regarding the interventions needed to deal with land reform by government.

The objective of the study will be realised by:

1) understanding the meaning, legislation and processes involved in municipal planning and land reform;
2) determining the role and responsibility of each sphere of government where municipal planning and service delivery is concerned;
3) identifying legislation that can be repealed or sections in the legislation that can be amended, integrated or aligned to reduce inconsistencies;
4) proposing methods for law reform and alignment of authorisation procedures where possible;
5) highlighting the need for constant law reform in legislation looking at the broader municipal planning and development; and
6) promoting the implementation of the National Development Plan at local government level.

7) Examine how the new knowledge unearthed can offer guidance and delivers support to capacitate local, provincial and national governments in the development and implementation of municipal plans, strategies and policies.

1.5 SCOPE OF WORK

The scope of work encompasses the following:

- Reviewing five pieces of legislation that have an impact on municipal planning, and benchmarking them by using the provisions of the Constitution and the SPLUMA.
- Recommending ways to deal with those pieces of legislation found to have an impact on municipal planning as the function and competency of municipalities.
- Analysing legislation relevant to land reform and how they connect with municipal planning.
- Defining concepts such as law reform, land reform, inconsistencies, planning law, and development planning and municipal planning, in order to give context and frame to the study.

The scope of work is based on section 40 of the Constitution, recognising that government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated. Senior Councillor J. Jafta, when granting the judgement in the matter between the City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal, commented on section 40 of the Constitution by stating that:

> *It is, however, true that the functional areas allocated to the various spheres of government are not contained in the hermetically sealed compartments but that notwithstanding, they remain distinct from one another. The distinctiveness lies in the level at which a particular power is exercised.*

The scope of work ultimately unpacks areas or functions that need to be reserved for municipalities to perform as part of municipal planning in order to improve service delivery. This includes those areas that national and provincial government can contribute to in order to support municipalities in rendering services to local communities and create economic growth and social stability while striving for sustainable and functional human settlements.

1.6 HYPOTHESIS

According to Welman *et al.* (2007:26-27), a hypothesis is a statement or proposition that can be tested by referencing to the empirical study. Similarly, Brynard and Hanekom (1997:19) explain

that a hypothesis is a suggested, preliminary, yet specific answer to a problem which has to be tested empirically before it can be accepted as a concrete answer and incorporated into theory. The hypothesis tested in this study was whether inconsistencies in national and provincial legislation contribute to inefficiencies in municipal planning and service delivery processes.

1.7 RESEARCH QUESTIONS

Collis and Hussey (2014:2) state that a research question is the specific question that the research is designed to investigate. The research questions reflect the curiosity of the researcher and offer a deeper understanding on a range of empirical instances while guiding and focusing the investigation (Alversson & Sandberg, 2013:1). Through this study, the following set of questions were answered:

1) What is municipal planning in relation to the provision of the Constitution?
2) What is the significance of law reform in light of municipal planning and service delivery?
3) What is the role of the national, provincial and local government in the broader municipal planning system and service delivery?
4) Which pieces of legislation either govern or impede municipal planning?
5) What legislation creates inconsistencies and how do such inconsistencies affect the powers and functions of municipalities?
6) What possible interventions can be explored to reduce inconsistencies while strengthening the performance of municipalities on municipal planning and service delivery?
7) What can municipalities do to realise land reform and municipal planning?
8) How will the existing knowledge identified to be relevant to this research be disseminated to instil new perspectives, enhance learning and enlightenment as well as develop practical instruments (frameworks) to improve municipal planning?

1.8 DELIMITATION OF THE STUDY

This study investigated the legislation that has an impact on municipal planning and the meaning and application of land reform. Notwithstanding the land tenure and restitution part of land reform, for the purpose of focusing the study, land redistribution is discussed in relation to municipal planning and service delivery.

The following five pieces of legislation have an impact on municipalities where municipal planning and service delivery is concerned:

1) National Environmental Management: Protected Areas Act (57 of 2003) (see Table 2.4).
2) The Subdivision of Agricultural Land Act (70 of 1970) (see Table 2.4).
3) Mineral and Petroleum Resources Development Act (MPRDA) (28 of 2002) (see Table 2.4).
4) The National Land Transport Act (5 of 2009) (see Table 2.4).
5) The Rationalisation of Local Government Affairs Act (10 of 1998) (see Table 2.4).

In order to underline the connection between municipal planning and land reform with special focus on land redistribution, the study investigated the provision of the:

1) Land reform (Labour Tenants) Act (3 of 1996);
2) Restitution of Land Rights Act, (22 of 1994);
3) Interim Protection of Informal Land Rights Act (31 of 1996);
4) Extension of Security of Tenure Act, (62 of 1997);
5) Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (19 of 1998)
6) Housing Act (107 of 1997); and the
7) Expropriation Act (63 of 1975).

The above-mentioned pieces of legislation as well as the pillars of land reform will be examined against the provisions of the Constitution in order to understand the legislative and executive powers of each sphere in municipal planning, land reform and service delivery. The SPLUMA, especially section 2(2), was used as the consistency measure. The three metropolitan municipalities in Gauteng, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni, were used as a frame of reference (case study).

1.9 SIGNIFICANCE OF THE STUDY

The study aimed to improve the understanding of how inconsistencies and shortcomings in national, provincial and local legislation impact on municipal planning and service delivery in local government contexts. The underlying notion was that municipalities will not be able to perform their developmental roles unless the playing field is levelled through proper legislative reforms. The study further aimed to contribute to the debate and to increase the understanding of policymakers on the legal dynamics underpinning cooperative governance and intergovernmental relations in South Africa.

There is but little literature on land reform, for instance Du Plessis (2009) Chigara *et al.* (2013) and Clark and Luwaya (2017). Brockett (1996), Coetzee (2012), and Schoeman (2003; 2015) are but a few contributors to the body of knowledge on municipal planning. Such studies are mentioned in this study. However, there is not much research on land reform as part of municipal planning. By pairing land reform and municipal planning, the study provides a different perspective and becomes important not only for municipalities but also to the threefold government arrangement.

Furthermore, there is a dearth of research on the inconsistencies arising from the interplay between national, provincial and local government legislation. It was the researcher's observation that while the Constitution makes provision for joint governance, the reality is that the efforts of municipalities to perform their development functions continue to be hampered by tensions in legislation. The study sought to generate new knowledge that can contribute to the government's concept of a developmental state, which is premised on the principle of cooperative governance.

1.10 LIMITATIONS OF THE STUDY

As articulated earlier, the study investigated inconsistencies between national, provincial and local legislation and the impact such legislation has on municipal planning and service delivery. There are not many studies that deal with law reform, harmonisation and alignment of legislation in the municipal planning context. However, there are relevant studies on the need for coordination of government legislation and policies. Such studies include approximation of environmental legislation which encourages countries aspiring to join the European Union to align their national laws, rules and procedures in order to give effect to the entire body of the European Union law contained in the *acquis communautaire* (Commission of European Communities, 2015).

A coordination mechanism became central in this study, as law reform and alignment of legislation depends on well-coordinated efforts. Ben-Gera (2009:2) states that coordination makes various different pieces of legislation work effectively, managing dependencies among actors. He further acknowledges the autonomy of departments in developing policies and legislation, and in the same breath encourages the principle of cooperative governance. The idea of coordination is one that is supported by officials in different government departments. However, the art of coordinated legislation is the one that disconcerts many government officials, as it is easily perceived to be an act of deception, disempowering departments in exercising their constitutional mandated duties. The State of Local Government in South Africa (2009:51) mentions the importance of coordination

in order to have effective service delivery. The Year Review highlights that successful service delivery requires coordination and commitment from all political structures and government.

Due to the nature of this study, it was not a surprise that participants felt it necessary to guard their individual territories and were not forthcoming with the true nature of events taking place in their areas of administration. Furthermore, not all selected participants were comfortable at first about participating in this study. The manner in which questionnaires and interviews were designed, however, reduced the discomfort on participants and, as a result, their responses played a significant role in providing recommendations to the research.

1.11 STRUCTURE OF THE STUDY REPORT

The study report is divided into seven chapters:

Table 1.1: Chapter overview

Title	Description
CHAPTER 1	
Orientation to the study	This chapter provides for the logic, significance and the methodology followed. The hypothesis is formulated to set the tone of the study.
CHAPTER 2	
South African planning system	The chapter provides the background to the south African planning system; legislative and executive framework; policy framework; Consistency assessment of legislation and case law influencing municipal planning.
CHAPTER 3	
International literature on the planning system	This chapter deals with an international literature review on the planning system to understand how other countries with their municipalities tackle matters relating to planning law and municipal planning. This provides for the benchmarking, knowledge exchange and lessons to be learned. This section further highlights areas of similarities, differences and improvement. Three African countries are discussed in this chapter to indicate the planning system during and after colonisation, namely

	South Africa, Nigeria and Zimbabwe, followed by a discussion of two non-African countries, namely the Federal Republic of Germany and Australia, to indicate the commonalities in the planning system
CHAPTER 4	
Urban and Regional planning	This chapter deals with planning theory; planning regulations; urban and regional planning; municipal planning; land reform and municipal planning; urban and regional planners as key functionaries for municipal planning. Further investigate the three metropolitan municipalities found in the Gauteng province, with an aim to understand their planning system. This part is an empirical case study whereby the municipal planning processes and land use management system of the three metropolitan municipalities in Gauteng, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities, are discussed. The case study is presented and explained in order to provide answers to the research questions and the hypothesis mentioned in Chapter 1.
CHAPTER 5	
Research design and methodology	This chapter provides the research design and methodological aspects of the study. It outlines the research areas and associated empirical evidence giving relevance to the theoretical framework of the study.
CHAPTER 6	
Empirical study: Analysis, recommendations and conclusion	This chapter indicates how the research questions have been responded to, based on findings derived from the case study, and secondary research thereafter highlights the inconsistencies and/or tensions revealed by the analysis.
CHAPTER 7	
Strategic recommendations	This chapter provides for recommendation and reflect new knowledge. This chapter further proposes activities to be undertaken by government. It also provides for concluding remarks and proposes future studies.

Source: Own compilation (2019)

1.12 CONCLUSION

This chapter elucidated the background, aims and objectives of the study, including the underpinning hypothesis and research questions. To reiterate, this study was inspired by the need to understand the inconsistencies among national, provincial and municipal legislation and how these impact on planning and service delivery in municipalities.

The following key concepts emerged in this chapter:

- Law reform and harmonisation.
- Land reform and municipal planning.
- Intergovernmental relations.
- Coordination and alignment.

These concepts will be defined later when dealing with the context of this study. As already discussed, municipalities are constitutionally mandated to effectively and efficiently provide basic services to their constituencies within the setting of cooperative governance and intergovernmental relations. Building on this understanding, the next chapter provides for the South African planning system, as well as the policies and legislative framework pertinent to the study.

CHAPTER 2: SOUTH AFRICAN PLANNING SYSTEM

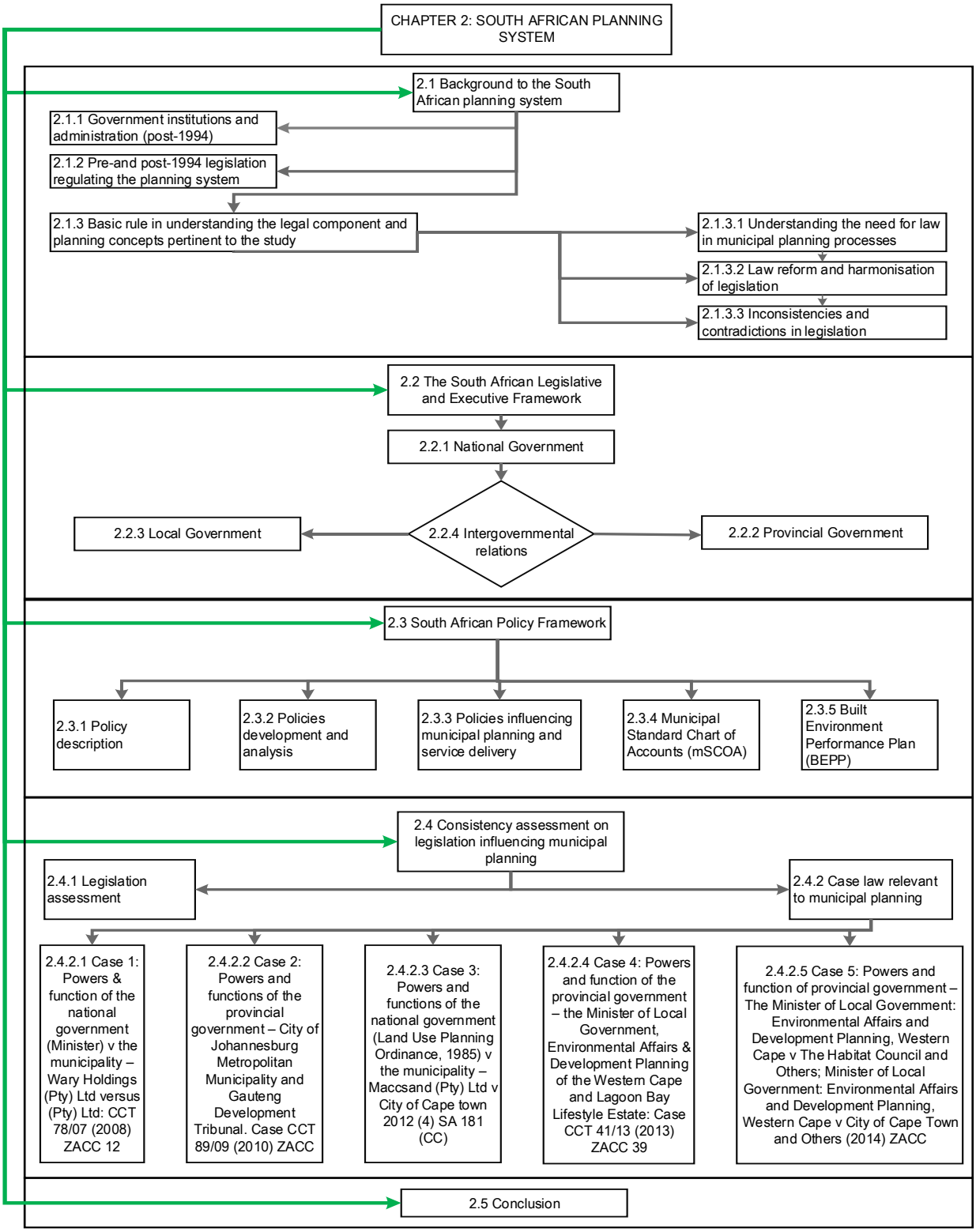


Figure 2.1: *Structure of Chapter 2*
Source: Own Construction (2019

In this chapter, the focus is on review of planning policies and their legislative frameworks. Legal terminology pertinent to the study is briefly discussed. The legislative and executive authority of the three spheres of government is also discussed in this chapter, thereby providing a context of the cases that shaped the new planning system and resulting to the assertion of SPLUMA. In this chapter, a way is paved to a broader understanding of the practical function and duties of the municipality within the constitutional framework.

2.1 BACKGROUND TO THE SOUTH AFRICAN PLANNING SYSTEM

The planning system in South Africa is said to have been influenced by colonial and post-colonial ideologies as far back as 1652. This includes the planning theories/approaches (as discussed below) as their influence is still very strongly reflected in [urban] planning approaches cultures and standards. Reflecting on the realities of the theory and colonial planning version Scholz *et al.* (2015:32) point out that the ideal of a colonial version of the Garden City was transferred to cities in the British colonies in sub-Saharan Africa. According to Homes (2015:17) in South Africa and Tanzania in particular this is reflected in their urban planning cultures and standards.

In 1948 South Africa experimented with new paradigm – Apartheid planning approach that institutionalised the racial strife that shaped South African spatial distribution and composition, making location and spatial planning political instruments (Beinart & Dubow, 1995:3). In various reviews and reflections, urban planning in South Africa was characterised by intra-urban social and racial segregation of European and African residents. Colonialism was coupled with racism, apartheid, sexism and repressive labour policies. The apartheid system was perpetuated using planning legislation and policies. The effects of the apartheid planning approach led to displaced urbanisation and a settlement pattern that are distorted, fragmented, unequal, incoherent and inefficient. The system was time-consuming and uneconomical, entrenching the system of unequal access to economic and social resources and opportunities.

It is not surprising that South Africa, given its colonial influence, adopted settlement patterns and designs based on the work of the English and British planning theorists such as Ebenezer Howard, founder of the Garden City theory, later Rand Burn and the Greenbelt towns which also conformed to the Garden City idea, and further introduced the idea of community living, vehicle and pedestrian separation by means of road hierarchies and an internal park network. These early town planning experiments saw the introduction of land use zoning and the use of public open spaces as a functional and restructuring element of the towns (Brockett, 1996:162).

Cities in South Africa, for example Cape Town, were the first to adopt the European style of urban planning, while Johannesburg owes its being to the discovery of gold in the Witwatersrand in 1886; Pretoria became the capital of the former Transvaal in 1860; Pietermaritzburg the capital of the former Natal in 1839; and Bloemfontein became capital of the former Orange Free State in 1846 (Cloete & Thornhill, 2005:3). For many years, these urban areas were small villages where whites and non-whites stayed on farms where they relied on livestock and crop farming, and satisfied their own needs by using rivers, wells or boreholes to access water.

South African history reveals that the spread of discriminatory British planning influence can be traced to the period 1910 to 1930 and the Second World War, together with post-war reconstruction efforts in the 1930s to the 1940s (Moroke, 2009:35). The traditional settlement planning gradually gave way to colonial planning approach (Dean, 2010:44) and apartheid planning system – well-structured and entrenched in institutions and city planning and land management – and they still persist decades after the end of their rule and influence power (Scholz, 2015:32). Christopher (1987:195) examined the foundation of apartheid planning which was laid in 1834 in Port Elizabeth. The London Missionary Society established formal black settlements on the western edge of Port Elizabeth in 1857, regulations were issued for the control of Africans in the town's native village. As a result, by 1872 East London has been described as being a town with a clear legacy of enforced racial separation (Njoh, 2012:63). Schoeman (2003; 2015:3) states that the colonial and post-colonial periods of the planning system led to what was termed 'grand apartheid' planning that was based on a spatially induced partition process, resulting in disintegrative spatial consequences. The apartheid planning was linked to blueprint planning or master planning, based on technocrat planning processes. The 1930s brought the town planning regulations to reinforce urban segregation, and the 1931 Transvaal Town Planning Ordinance required municipalities to exercise greater control over town planning in terms of land use, building sizes and housing density. In various reviews and reflections (Schoeman, 2015; May & Rogerson, 1995; Mabin, 1996; Beinart & Dubow, 1995) this heightened separate development and racial segregation. Though in essence, the history reveals that the foundation of apartheid planning was laid in 1834 in Port Elizabeth (Christopher, 1987:195). As a result, cities, mining, industries and commercial activities existed to benefit the oppressors. The income distribution was uneven and racially distorted. The whites became wealthy at the expense of other racial groups, especially the black classified groups. Segregation in education, health, welfare, transport and employment left deep scars of inequality and economic efficiency. South Africans were directly or indirectly suffering from the ramification of apartheid as it touched every sphere of life, be it either at social, economic, spatial, cultural, health and environmental levels. To rectify the ills of the apartheid planning, the RDP was introduced. It was centred on six principles, namely a people-driven process; peace and security for all; national building; connecting reconstruction and development; democratisation of South Africa; and an integrated programme. The

programme was envisaged to meet the basic needs and open up previously suppressed economic and human potential in urban and rural areas. In 1955, the Freedom Charter was drawn to reflect the new ideals of the end of the apartheid era. The Freedom Charter (1955) became the basis of the Constitution. Despite the Freedom Charter, the racial segregation was reinforced. In 1960, a grand apartheid project created independent states – Bantustans – based on the ethnic groups. Such segregation was given a legal status by passing the Self-Governing Territories Constitution Act (21 of 1971), which provided for the establishment of so-called 'self-governing' territories. These territories were not economically viable (Oranje & Merrifield 2010:33). It is evident through literature that in the history of South Africa, colonialism and apartheid was done using strategies and legislation. The effects of apartheid were very strong and heartfelt by all and recognised internationally. Hence, among other countries, the European Community in 1985 imposed a limited scope of trade sanctions on South Africa and later, in 1986, more significant sanctions followed banned the import of steel, iron, gold and new investment in South Africa. Such sanctions were strengthened by the enactment of the Comprehensive Anti-Apartheid Act by the United States Congress restricting lending to South Africa (Levy 1999:7).

2.1.1 Government institutions and administration (post-1994)

With the enactment of the Constitution, the municipalities were reconfigured in terms of the Local Government: Municipal Demarcation Act (27 of 1998) and reduced from 843 to 284, and later to 278. Government, as guided by the Constitution, introduced the three spheres of government and reformed the legislative functions, functionaries and associated institutions.

Chapter 3 of the Constitution provides for three "distinctive, interdependent and interrelated" spheres of government. Furthermore, all spheres of government must observe and adhere to the principles in this chapter and must conduct their activities within the parameters that the chapter provides. Specifically, the Constitution states that "government is constituted as national, provincial and local spheres of government which are distinctive, interdependent and interrelated" (section 40(1)).

2.1.2 Pre- and post-1994 legislation regulating the planning system

Following the reformation of the spheres of government, municipalities had to resume their constitutional mandate and perform as provided for in the Constitution. There were also pieces of legislation that were developed post 1994 at national level to meet the developmental goals of the democratic government. Those pieces of legislation were developed to fast-track development to ensure that the country redresses the social imbalances and also empowers municipalities to ensure that service delivery takes place in a structured and integrative manner.

As national and provincial sphere of government enacted multiple legislation dealing with land use and municipal planning, such created what Ingle (2006:754) describe as a barrage of legislation designed to regulate land development. Even though, pieces of legislation were developed responding to the objective of the democratic government, most of the pre-1994 pieces of legislation were never repealed. This means both pre- and post- 1994 legislation are still applicable. The consequence of using the pre- and post- 1994 pieces of legislation left South Africa choking trying to make sense of the role and responsibilities of national, provincial and municipalities in municipal planning.

The table below brings evidence as it indicates the pre- and post-1994 pieces of legislation that exist and influencing municipal planning. These pieces of legislation are still applicable to be implemented by municipalities when regulating land uses.

Table 2.1: Examples of legislation regulating the planning system in South Africa

Legislation developed pre-1994 (directly used by municipalities as part of their municipal planning function)	Legislation developed post-1994 (directly used by municipalities as part of their municipal planning function)	National and provincial legislation (to be considered by municipalities in performing their municipal planning function)
Deeds Registries Act 47 of 1937; State Land Disposal Act 48 of 1961 The Subdivision of the Agricultural Land Act 70 of 1970; National building Regulations and Building Standards 103 of 1977; Gauteng Town Planning and Townships Ordinance No. 15 of 1986; Tobacco Product Control Act, 1993;	Gauteng Removal of Restriction Act 3 of 1996; Interim Protection of Informal Rights Act 31 of 1996; Local Government: Municipal Structures Act 117 of 1998; Prevention of Illegal Eviction from Unlawful Occupation of Land Act 1998; Land Survey Act; The White Paper on Local Government 1998; The Rationalization of Local Government Affairs Act 10 of 1998; Municipal Systems Act 32 of 2000; Municipal Finance Management Act 56 od 2003; Land reform (Labour tenants) Act 4 of 2011; Spatial Planning and Land Use Management Act 16 of 2013	Housing Act 107 of 1997 National Environmental Management Act, 107 of 1998 including regulations and list of activities; National Heritage Resources Act 25 of 1999; Gauteng Transport Infrastructure Act 8 of 2001; Mineral and Petroleum Resources Development Act 28 of 2002; National Environment Management: Protected Areas Act 57 of 2003; National Health Act 61 of 2003; National Environmental Management: Biodiversity Act 10 of 2004; Water Services Act 108 of 1997; National Environment Management: Waste Act 59 of 2008 National Land Transport Act 5 of 2009; Environmental Impact Assessment Regulations 2014.

Source: Own construction (2019)

The above table captures 27 pieces of legislation that are actively used by municipalities. This confirms that municipal planning, as a municipal function, is highly regulated. It is evident that there are number of pieces of legislation that are still applicable straddling between the apartheid and democratic era. It thus becomes pivotal to undertake a law reform exercise to ensure that the relevant pieces of legislation are constitutionally sound and advocate the needs of the local communities. Furthermore, there is a need for municipalities to be equipped in assuming their rightful position where land use management, land development and spatial planning is concerned. This will mean that municipalities within the constitutional framework define the role

and responsibility of the national and provincial spheres of government on municipal planning matters.

The support given in terms of evaluation and monitoring must also be an agreement between the three spheres of government. This will ensure that there is synergy and coordination in the planning processes and provision of projects essential to the growth and development of the country.

The above should not be interpreted as saying that the national and provincial spheres of government have no space in local government; it simply says that planning must be done in a collective and structured manner in order to achieve common desired goals, irrespective of how interest may be competing. The three spheres of government must be able to find each other as per the provision stipulated in Chapter 3 of the Constitution which provide for the intergovernmental relations.

In bringing the rationale behind the study, legal terminologies pertinent to the study are briefly discussed. The legislative and executive authority of the three spheres of government is also explained giving the policy and legislative events that shaped the new planning system and resulting to the assertion of SPLUMA. In this chapter, the way is paved to a broader understanding of the practical function and duties of the municipality within the constitutional framework in Chapter 4 of this study.

2.1.3 Basic rule in understanding the legal component and planning concepts pertinent to the study

Urban and Regional Planning by its nature of dealing with properties and persons, relies heavily on law and legislation. However, the reliance on law and legislation does not make town and regional planning a tributary to law but it simply means planning can never exist outside a legal framework. The planning concepts, processes and legislation used in this section must be understood to be addressing, strengthening and giving authority to activities as part of town and regional planning. In this case, municipal planning is discussed as a function contained in the Constitution. It is important to note that some concepts may hold different meanings when used or interpreted by town planners vis-à-vis legal experts.

2.1.3.1 Understanding the need for law in municipal planning processes

Du Plessis (2002:19) mentions that legislation is seen as one of the three generative sources of law. Municipal planning is founded on a legal framework due to the fact that it is a place-making tool, regulating the use and management of land promoting ownership, livelihoods of people, development and maintenance of places. Thus, municipal planning must be performed to provide

a balancing mechanism and the intelligence to control and enforce the law without fear or favour. Municipal planning is directly connected with the realisation of Chapter 2 of the Bill of Rights as contained in the Constitution.

According to Williams (2002:2), law is the cement of society and an essential medium of change. It is an integral part of a constantly evolving social landscape, promoting accuracy of expression, facility in argument and skills in interpreting the written word. Kramer (2007:123) notes that the cardinal aspect of the rule of law will be stymied if statutes, administrative regulations and judicial opinions, as well as other expressions of legal norms, are not drafted perspicuously. This means that the legal system fails when law becomes inoperable due to its complexity. Relevant to this study is the comprehension of the need for law in order to deal with the demands of society through various sectors.

2.1.3.2 Law reform and harmonisation of legislation

Law reform is the process of examining existing laws, and advocating and implementing changes in a legal system, usually with the aim of enhancing justice or efficiency. Law reform is a solution to a problem which arises because law, legal institutions or legal methods are outdated or have become obsolete. It is the precursor to the economic, political and social advancement of any nation; thus, law reform should never end but become a constant process (Musdapher, 2014:10).

Craythorn (2003:1-7) provides a supporting example on law reform, indicating that South Africa has had five constitutions, namely: The South Africa Act 1909; Republic of South Africa Constitution (32 of 1861); Republic of South Africa Constitution Act (110 of 1983); Constitution of South Africa Act (200 of 1993) (The Interim Constitution); and the Constitution of the Republic of South Africa 1996. This is an indicative that for a developmental and progressive country, law reform becomes part of transformation so that developmental agenda of government can be achieved.

There are key pieces of legislation that were specifically developed to transform and strengthen local government insofar as development, institutional arrangement, allocation of powers and functions are concerned.

It is evident that law reform is firstly an ongoing process that is chiefly designed to keep laws effective and pertinent to societal needs. Secondly, it is only through law reform that justice can be attained in society. For example, cumbersome laws that inhibit or block municipal planning and service delivery need to be changed, modified or repealed to make way for more supportive and progressive laws that promote sustainable development. Thirdly, and perhaps more importantly, law reform as a process, suggests that laws are not static; rather, they evolve with time. Leeming (2011:2) states that rules and orders should not contradict each other; that is to

say, citizens should not be placed in the position of having to obey the requirements of laws that are inconsistent with each other. The Jakarta Post (2019:1) cited the National Development Planning Minister Bappenas saying “government plans to establish an institution that will be responsible for synchronizing contradictory and overlapping rules in regulations issued by different institutions, which have been blamed for sluggish investment growth”. South Africa as a developing country must be able to align itself with global legal development and transformation thereof that are taking place in other parts of the world.

Australia as one of the old established democracies acknowledge the importance of law reform in responding to identified gaps in existing laws. Maguire (2019:7) state the work of the Law Reform and Royal Commission in Australia that has been commissioned to undertake law reform in Australia with the purpose reform laws in order to ensure their relevance and the ability to meet the current developmental needs. For a better understanding of this chapter, definitions are provided in order to bring context to the study.

2.1.3.3 Inconsistencies and contradictions in legislation

The Concise Oxford English Dictionary (2011) explains ‘contradiction’ as “a lack of agreement between two facts, opinions or beliefs”. In a written submission to the High Court of Australia, in which section 109 of the Commonwealth Act was under scrutiny, Adrian Knox and Gavan Duffy (cited by Bailey, 1941:11) considered that two enactments may be inconsistent, although compliance with each of them may be possible without disobeying the other:

> *Statutes may do more than impose duties. They may for instance confer rights and one statute is inconsistent with another when it takes away a right conferred by that other even though the right be one which might be waived or abandoned without disobeying the statute which conferred it.*

Dixon J in *Ex parte MacLean (1930) 43 CLR 472, 483* providing an interesting *view* on inconsistency:

> *The inconsistency does not lie in the mere coexistence of two laws which are susceptible of simultaneous obedience. It depends upon the intention of the paramount legislature to express its enactment, completely, exhaustively, or exclusively, what shall be the law governing a particular conduct or matter to which its attention is directed.*

In the South African context, the Constitutional Court of South Africa (1996:16-17), during the certification of the KwaZulu-Natal Constitution, ruled that:

> *For purposes of the present enquiry as to inconsistency, we are of the view that a provision in a provincial bill of rights and corresponding provision in Chapter 3 [of the interim KZN constitution] are inconsistent when they cannot stand at the same time, cannot stand together, or cannot both be obeyed at the same time. They are not inconsistent when it is possible to obey each without disobeying the other.*

2.2 THE SOUTH AFRICAN LEGISLATIVE AND EXECUTIVE FRAMEWORK

This chapter describes the South African legislative system and explains why and how pieces of legislation from the national and provincial spheres of government impact on municipal planning.

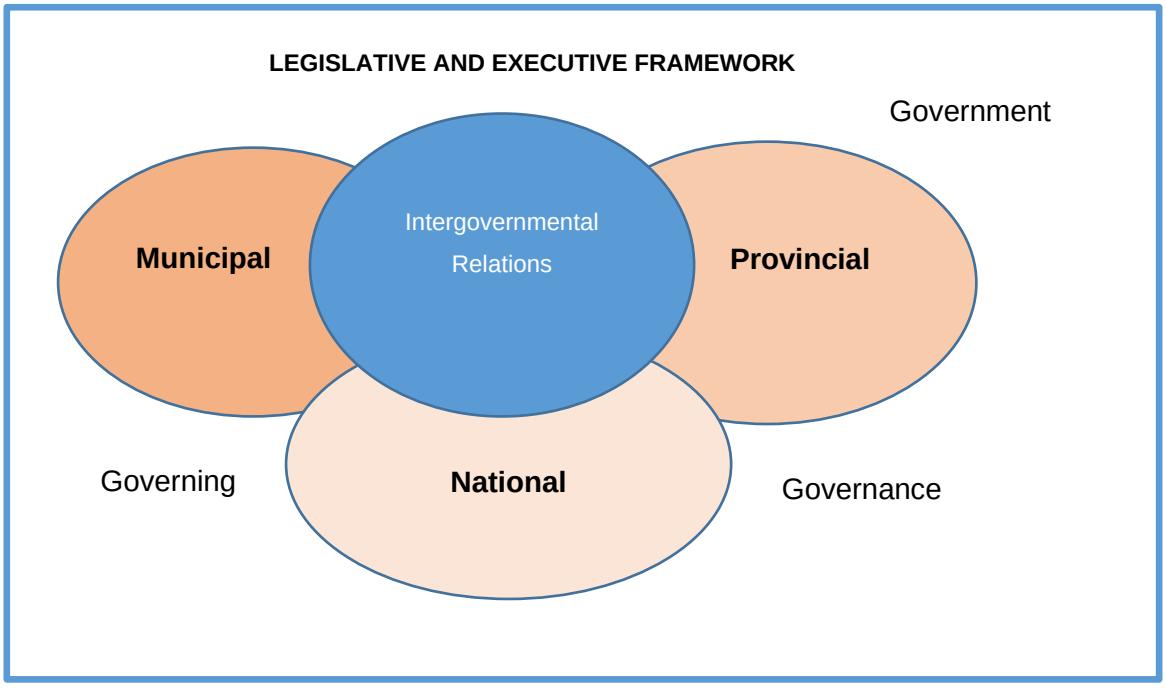


Figure 2.2: Legislative and executive arrangement applicable to the three spheres of government

Source: Own Construction (2019)

For the purpose of this study, only the legislative and executive authority of the three spheres of government is discussed. The Legislative arrangement permits that statutes pertinent to municipal planning can be enacted by the three spheres of government. It thus becomes imperative to explain the constitutional mandate of the three spheres of government in municipal planning. The Constitution provides for the legislative and executive authority of each sphere, but also acknowledges the interdependence of these three spheres of government. Thus, no illusion is given that there is a hierarchy between the spheres and legislation developed by each sphere of government. The legislative and executive authority of the different spheres of government is determined according to the functional areas set out in Schedules 4 and 5 of the Constitution.

In terms of section 2 of the Constitution, any law or conduct inconsistent with the Constitution is invalid, and every duty imposed by the Constitution must be fulfilled. A significant implication of constitutional supremacy is that in the exercise of their powers and the performance of their

functions, the respective governments must observe and give effect to the provisions of the Constitution (Malherbe, 2008:20). Legislative competence entails the power to enact legal rules, while executive competence entails the power to give effect to legal rules. In discussing the relationship between the spheres of government, three further constitutional matters need to be considered. One is the power of the national sphere to intervene by legislation or executive authority in provincial affairs, and the power of a province to intervene where a municipality fails to fulfil an executive obligation. The second is the power of provincial government to monitor and support (Malherbe, 2008:77).

According to Freedman (2014:567), the division of legislative authority among the different spheres of government imposes important limits on the power of each legislature to pass legislation. These 'federalism limits' mean that a legislature (for example, parliament or a specific provincial legislature or municipal council) may not pass legislation that falls outside its competence. An important consequence of these limits is that, if a legislature does adopt legislation that falls outside its competence, the legislation in question will be invalid. In the same vein, Steytler (2005:281&284) contends that freedom has been given to provinces and municipalities to create their own governments, political institutions, and processes of government. Notwithstanding, Chapter 6 of the Constitution prescribes the political, legislative and executive institutions of provinces; and Chapter 13 requires national legislation to regulate the financial management of municipalities. The research problem therefore suggests that municipalities are tightly regulated through multiple pieces of legislation such as the Municipal Finance Management Act, the Municipal Systems Act and the Municipal Structures Act.

Pursuant to section 44 of the Constitution, national legislative authority is vested in parliament and confers on the National Assembly the power to amend the Constitution, to assign legislative power to the other spheres of government, and to pass legislation on any matter. The national authority includes matters within a functional area listed in Schedule 4, entitled 'Functional areas of concurrent national and provincial legislative competence', but excluding matters within a functional area listed in Schedule 5, called 'Functional areas of exclusive provincial legislative competence' (Bronstein 2004:6). Section 44(2) of the Constitution provides for the exclusion that is subject to the provision stating that parliament may pass legislation with regard to a matter falling within a functional area as provided for in Schedule 5, when it is necessary to maintain national security, economic unity or national standards, to establish minimum standards required for the rendering of services, or to prevent unreasonable action taken by a province that is prejudicial to the interests of another province or to the country as a whole.

Notwithstanding the provision of section 44 of the constitution, the Municipal Structures Act provide in Section 85 for the adjustment of division of functions and powers between district and

local municipalities and provides for the temporary allocation of functions and powers in Section 87. The South African legislative system is designed to be an end to end arrangement ensuring that local government is capacitated and supported when there is an indication of any level of inefficiencies the later statement is supported by the Municipal Systems Act stating its objective is to provide for the core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic upliftment of local communities. Furthermore, to establish a framework for support, monitoring and standards setting by other spheres of government in order to progressively build local government into an efficient, frontline development agency capable of integrating the activities of all spheres of government for the overall social and economic upliftment of communities in harmony with their local natural environment. The pieces of legislation just mentioned propels a significant discussion on the powers and functions of each sphere of government so that the broader legislative is understood in light of this study.

2.2.1 National government

According to the Constitution, the executive competence of the national sphere of government is vested in the president. The president exercises the executive authority together with the other members of cabinet. Some cabinet members are appointed by the president as ministers assigned to different portfolios or departments at national level. Each minister has powers and functions entrusted by the president in terms of the Public Service Act (103 of 1994), read together with section 97 of the Constitution.

The national executive authority through ministers is exercised by preparing, initiating and implementing national legislation, developing and implementing policy, coordinating the functions of state departments and administrations, as well as preparing and initiating legislation. Olivier, van Zyl and Williams (2013:114) cites Bronstein (2004) stating that the national government has exclusive powers in respect of all matters other than those specifics bestowed in the provincial legislators by the Constitution.

2.2.2 Provincial government

Olivier *et al.* (2013:114-115) argue that the constitution allocates legislative powers between national and provincial government on the basis of the subject matter of legislation. Section 104 of the Constitution states that the legislative authority of a province is vested in its provincial legislature. The provincial legislature may adopt a provincial constitution, pass legislation on matters listed in Schedules 4 and 5 of the Constitution, and assign legislative power to municipal councils.

According to the Constitution, provinces have exclusive legislative competences over the matters listed in Schedule 5. 'Provincial planning' is one of the functional areas of exclusive provincial legislative competence as set out in Schedule 5, Part A, of the Constitution. A provincial legislature has concurrent legislative competence with parliament over matters listed in Schedule 4, and it may make laws reasonably necessary for or incidental to the effective exercise of any matter listed in Schedule 4. Schedule 4 matters include development, urban and regional planning. Urban and regional planning as discipline deals with spatial planning, land development and land use management which form part of municipal planning. Municipal planning is listed as a matter that only local government is responsible for. The conundrum comes where spatial planning as a function is the one that cuts across the three spheres of government. According to SPLUMA, the national and provincial sphere of government and each municipality must prepare a Spatial Development Plan (SDF) as a tool to direct the spatial form of the country by interpreting the spatial development vision of the responsible sphere of government. However, land development and land use management are done through a land use scheme, which is the only legal instrument developed by municipalities to give effect to the spatial plans and confer developmental rights to each property or land use.

Van Wyk (2012:291,638) agrees that certain matters related to planning are shared by the national and provincial spheres. In the context of planning, 'regional planning and development' and 'urban planning and development' are listed as areas of concurrent legislative competence in Schedule 4, Part A, and 'municipal planning' is listed in Schedule 4, Part B. Both parliament and provincial legislatures can, therefore, pass legislation on all of these functional areas. Nonetheless, Yacoob (2010) points out that provincial planning does not include municipal planning. Municipal planning is expressly stipulated as a local government function, over which both the national and provincial spheres exercise legislative competence.

2.2.3 Local government

Section 151 of the Constitution provides for the status of municipalities, stating that the local sphere of government consists of municipalities, which must be established for the whole territory of the RSA. The executive and legislative authority of a municipality is vested in its municipal council. A municipality has the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation as provided for by the Constitution. The national or provincial government may not compromise or impede a municipality's ability or right to exercise its power or perform its function.

Section 152 of the Constitution provides clear objectives for local government, stating that local government should provide democratic and accountable governance for local communities; to ensure the provision of services to the communities in a sustainable manner; and to promote

social and economic development. Section 153 of the Constitution provides developmental duties of municipalities, stating that municipalities must structure and manage its administrative, budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community and participate in national and provincial development programmes**.**

De Visser (2009:12) contends that the 'distinctiveness' of local government as a sphere of government establishes itself in a number of ways. First, the Constitution allocates 'original' powers and functions to municipalities. It does this by providing a list of 'local government matters' over which local government has authority (section 156 of the Interim Constitution of the RSA, 1993). Second, additional powers can be transferred from national and provincial governments to local government as a sphere, or to individual municipalities (De Visser, 2009:12).

The emphasis on the distinctiveness of local government is balanced by the 'interdependence' and 'interrelatedness' of the three spheres. Local government's interdependence in relation to other spheres of government connotes a relationship of supervision. National and provincial governments are constitutionally entitled and mandated to supervise the performance of municipalities. The constitutional division of functions between national government and provincial governments determines the extent to which either of them may supervise municipalities with respect to a particular functional area (De Visser, 2009:13). The legislative powers of the municipal councils are set out in section 156(1) of the Constitution:

> A municipality has executive authority in respect of, and has the right to administer—
>
> (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
>
> (b) any other matter assigned to it by national or provincial legislation.

In addition to the above, section 156(2) of the Constitution also provides that a "municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer". Aside from sections 156(1) and (2), section 156(5) also mentions that a "municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions". An examination of these sections shows that they distinguish between three types of powers, namely:

- Powers that are derived directly from the Constitution. These powers may be referred to as 'original powers.
- Powers that are assigned to municipalities in terms of national or provincial legislation. These powers may be referred to as 'assigned powers.

- Powers that are reasonably necessary for, or incidental to, the effective performance of a municipality's functions. These powers may be referred to as 'incidental powers.

Although the Constitution confers the authority on municipalities to pass laws in respect of the matters listed in Part B of Schedule 4 and Part B of Schedule 5, the same authority has also been conferred upon the national and provincial governments. Municipalities, therefore, share the power to pass legislation on the matters listed in Schedules 4B and 5B with the national and provincial governments (Freedman, 2014: 570,612). This means that the three spheres of government need to adopt a transformed approach, recognising the interrelatedness and interdependency system that exists within government spheres. It is the researcher's submission that each sphere must participate in the legislation process of the other spheres. The legislative process must start with understanding what has been regulated before in addressing the matter to be legislated. The intention and extent of the legislation must be clear. Where required, an existing law can be strengthened to address a particular matter rather than creating a law. This will show an in-depth comprehension of the spirit of the Constitution insofar as intergovernmental relations and cooperative governance are concerned.

2.2.4 Intergovernmental relations

Given the powers and function of each sphere of government, a framework was necessary to guide the manner in which spheres should treat each other and operate; hence Chapter 3 of the Constitution. Section 41 of the Constitution sets out principles for cooperative government and intergovernmental relations:

> (1) All spheres of government and all organs of state within each sphere must—
>
> (a) preserve the peace, national unity and the indivisibility of the Republic;
>
> (b) secure the well-being of the people of the Republic;
>
> (c) provide effective, transparent, accountable and coherent government for the Republic as a whole;
>
> (d) be loyal to the Constitution, the Republic and its people;
>
> (e) respect the Constitutional status, institutions, powers and functions of government in the other spheres;
>
> (f) not assume any powers or function except those conferred on them in terms of the Constitution;
>
> (h) co-operate with one another in mutual trust and good faith by—
>
> (i) fostering friendly relations;
>
> (ii) assisting and supporting one another;
>
> (iii) informing one another of, and consulting one another on, matters of common interest;
>
> (iv) co-ordinating their actions and legislation with one another;

(v) adhering to agreed procedures; and

(vi) avoiding legal proceedings against one another.

The Intergovernmental Relations Framework Act read with section 41 of the Constitution exist to promote and facilitate intergovernmental relations and to provide for mechanisms and procedures to facilitate the settlement of intergovernmental disputes. The above mentioned legislative "trinity" system requires rules of the games to be outlined properly so that there is no contradiction in the application of the law. Section 36 of the Intergovernmental Relations Act directs provincial government when drafting legislation and developing policies to be considerate and cognisance of national priorities, interest of the local communities in the province, and consult with the local sphere of government in the province and any specifically affected municipalities. Furthermore, the provincial sphere must be considerate of the impact that such policy or legislation might have on the functional, institutional or financial integrity and coherence of government in the local sphere of government in the province.

Thus, the impact of national and provincial legislation in municipal planning and service delivery must be assessed and understood in line with the above-mentioned principles. Opeskin (2001:129) states that intergovernmental relations are commonly used to describe the relations between central, regional and local governments, as well as between departments that facilitate the attainment of common goals through cooperation. In other words, intergovernmental relations imply the interactions between the different levels of government within the state (Adamolekun, 2002:60).

In the words of Ogunna (1996:350), intergovernmental relations are the complex pattern of interactions, cooperation and interdependence between two or more levels of government. Hassall (2010:2-3), submits that intergovernmental relations are "the mechanisms by which different levels and branches of government interact with one another in the process of meeting the needs and interests of the public". The connection between the three spheres of government demands a partnership approach since no land development can take place outside the municipal space, irrespective of national and provincial mandated duties. Chapter 3 of the Constitution places an emphasis to the autonomy of each sphere, while promoting interrelatedness, collaboration and coordination. It is essential to note that the constitutional distribution of power between the three spheres of government in an analogy resembles parallel lines connected by a transversal line to create congruency with the requirements of the law and bring same measure on the application of law.

However, the interdependent nature of the three spheres of government may create functions with degree of inconsistencies, duplications and *ultra vires* tendencies, negatively affecting the ability of municipalities to effectively perform municipal planning render services. Therefore, it

becomes important to investigate the consequence of the legislative powers of each sphere of government given the fact that there is plethora of legislation that have been enacted pre- and post- 1994. The impact of using both pre- and post- 1994 legislation looking at objective of municipal planning as a function and the transformative agenda of government will then be discussed below to give proper context to the study. In addition, discuss few court judgements that have been rendered by various courts in South Africa settling the powers and functions of each sphere of government.

2.3 SOUTH AFRICAN POLICY FRAMEWORK

For the purpose of this study, a policy framework is seen as an approach or compass that guides how institutional policy should be developed in order to dissect and articulates legislation provisions and broader organisation statement into activities that can be incrementally and periodically achieved. The policy framework provides the content structure of what should be contained in the policy document such as definitions, processes to be followed, body of argument, targeted groups, implementation procedures, compliance mechanisms, risk management, monitoring and evaluation strategies as well as parameters for decision making. Policy framework ensure that policy development is informed, relevant and consistent with applicable legislation and vision of the institution. Cloete and Coning (2011: 4) state that for a policy to be regarded as public policy, it must have been processed within the framework of governmental procedures, influences and organisations.

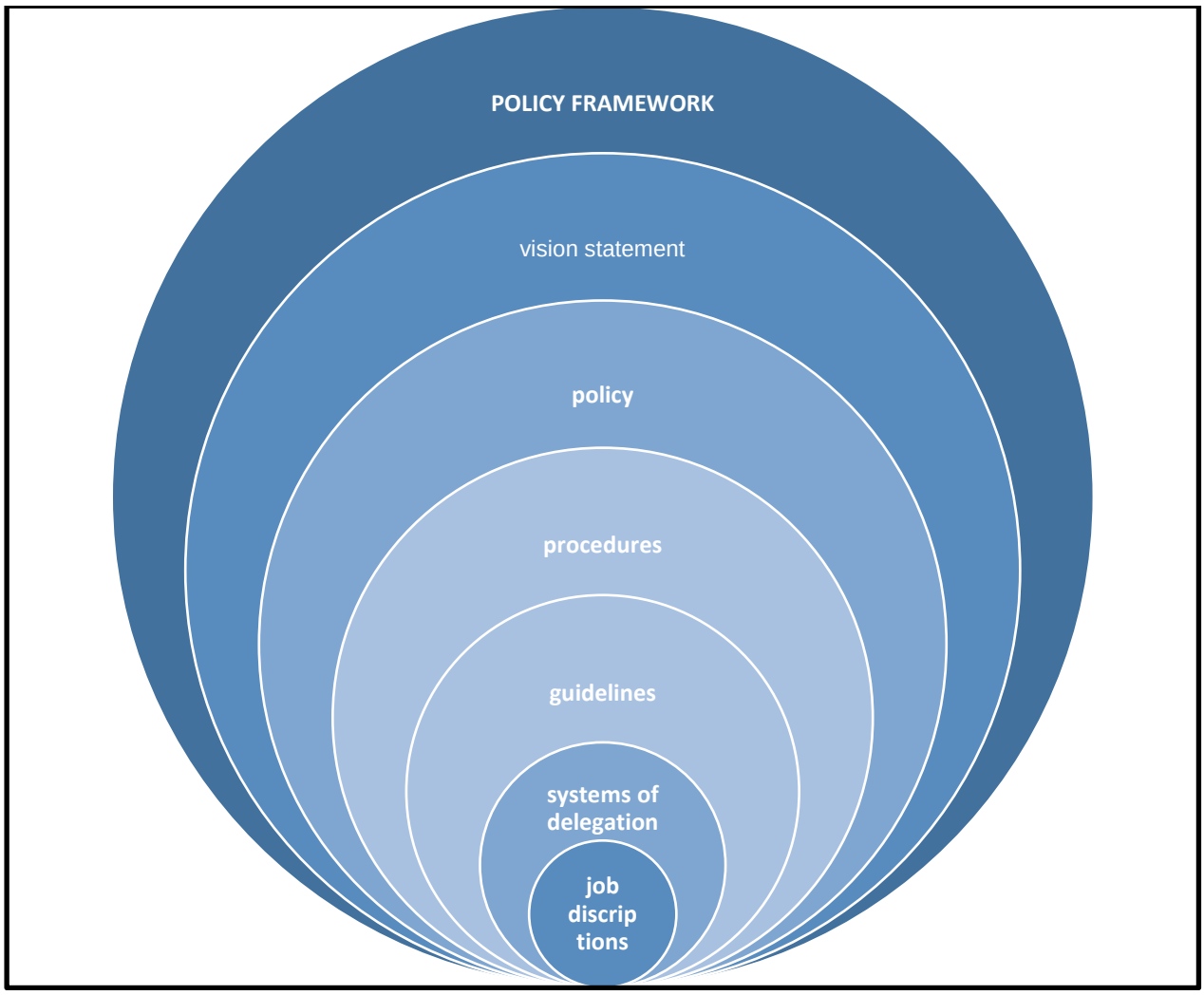


Figure 2.3: Policy framework

Source: Own construction (2019)

2.3.1 Policy description

Policy is the document that unpacks the organisational vision into small manageable activities that can be implementable and measurable in real time. Cloete and de Coning (2011:4) defines policy as a statement of intent or an action plan to transform a perceived problem into a future solution. It is seen as a comprehensive framework of and/ interaction. This study looks as administrative policies dealing with development issues. Administrative policies are often informed by legislation. The policy framework in South Africa has a comprehensive model that should be understood in the context of integrated planning. The integrated planning enables the three spheres to collaborate in their policy making effort, thus ensuring that policies are in harmony to achieve broader developmental vision of government as well as sphere specific developmental targets. Policy making and implementation must indicate a seamless approach to promote spatial justice, land use management, environment protection, agriculture production and infrastructure provision. In so doing enables economic growth, job creation and service delivery to communities.

2.3.2 Policy development and analysis

Policy development and analysis requires an integrated approach whereby interdependent analytic methods are utilised. This allows the analysis to be prospective, retrospective and enable problem finding and problem solving (Dunn 2012:9-10).

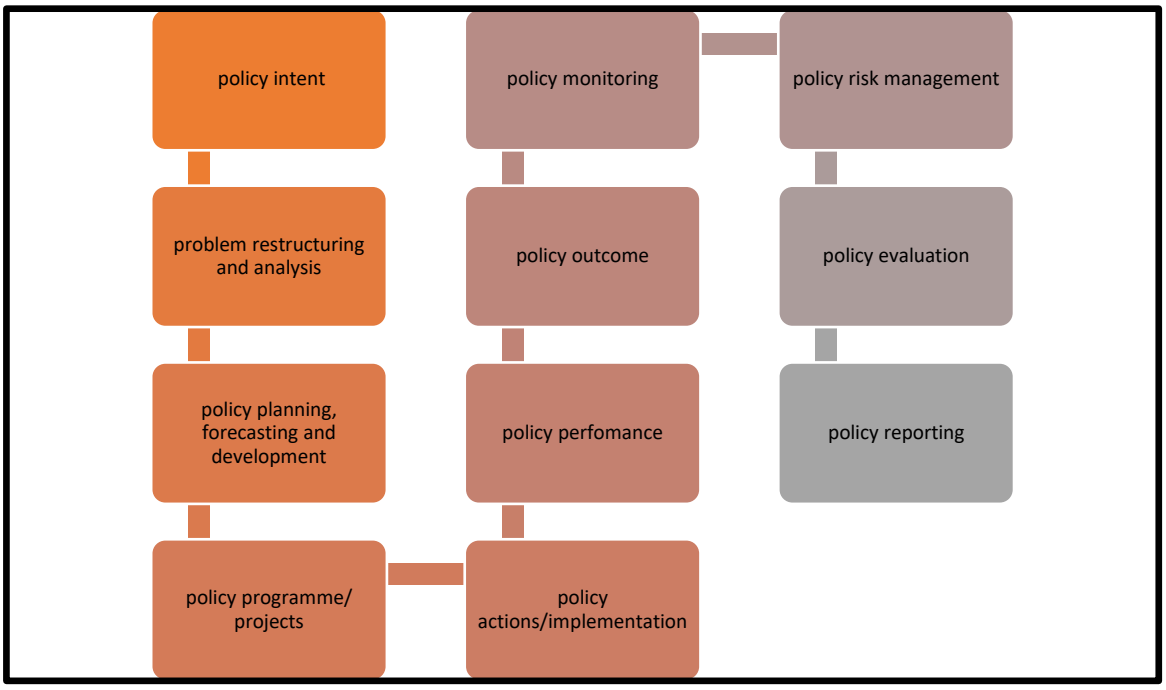


Figure 2.4: Policy analytic approach

Source: Own Construction (2019)

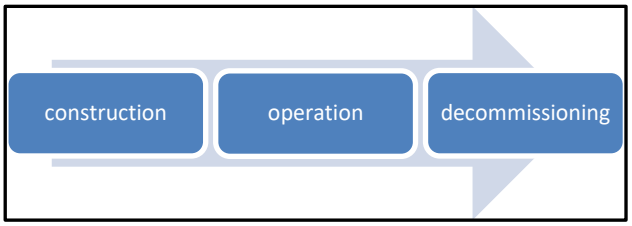
It has been mentioned that there are numerous pieces of legislation regulating municipal planning especially spatial planning, land use management, land development, environmental management, agriculture protection and infrastructure provisions. In the same breath, there are several policies that are used by municipalities in executing their municipal planning function and rendering services to the community. These policies are often subsidiary to specific legislation enabling easy and focused implementation thereof.

2.3.3 Policies influencing municipal planning and service delivery

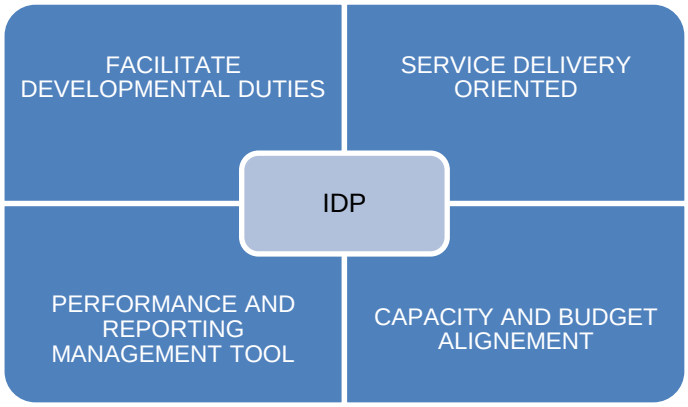
For the purpose of this study, policies that are instrumental to municipal planning and service delivery are discussed to give context relating to the land use management system.

Table 2.2: Policy provisions influential to municipal planning and service delivery

SPHERE OF GOVERNMENT	POLICY	OBJECTIVE
National sphere of government	National Development Plan (NDP) 2030	It provides for the broad strategic framework to guide key choices and actions. It focuses on the critical capabilities needed to transform the economy and society. Growth and jobs, education and skills, and a capable and developmental states are amongst the priorities identified. Aims of the NDP amongst other objectives aim to eliminate poverty and reduce inequalities by 2030; increase active citizen in their own development; faster and more economic growth; improve infrastructure; building environmental sustainability and resilience; transforming human settlement; reform the planning system for improved coordination.
	National Spatial Development Framework	It is high level representation of current and future desired spatial patterns. It determines the levels of the infrastructure capacity, the state of the environment and agriculture land in the Country. It considers spatial structural element of all 9 provinces and provides for an inclusive spatial vision for the country in accordance with the National Development Framework. It lays a foundation in which spatial transformation can contribute toward spatial justice, social inclusion and economic transformation. It considers and synchronises policies from both private and public role players that have impact on spatial planning, land development and land use management. It promotes for capital investment and expenditure framework permitting budgeting system that will allow achievement of the developmental and transformation agenda of government.
	Integrated Urban development framework (2016)	It is a response directive of the NDP that provided for the development of the urban development policy that will cater for the increasing population by ensuring that proper planning and necessary infrastructure supports the growth. Furthermore, the framework responds to sustainable development goals by making cities and human settlements inclusive, sae, resilient and sustainable. It focuses largely on spatial transformation whereby issues around spatial integration, inclusion and access, growth and government as goals that must be achieved by the three spheres of government.
	National Transport Master Plan 2050	Aims to achieve an integrated, smart and effective transport system supporting a thriving economy that promotes sustainable economic growth, supports a healthier lifestyle, provides safe and accessible mobility options, socially includes all communities and preserves the environment. Further seeks to achieve a national transport system that is well planned, integrated and aligned across sectors; supports and inclusive spatial vision; supports economic

		competitiveness through seamless multimodal trade corridors; and is effectively implemented through accountable delivery mechanism.
	Comprehensive Rural Development Programme	The vision is to create a vibrant, equitable and sustainable communities. The programme seeks to address poverty and food insecurity by maximising the use and management of natural resources. It further seeks to rectify the past injustices and improve standard of living and welfare through rights-based intervention that addresses skewed patterns of distribution and ownership of wealth and assets. The programme is consistent with the provision of the NDP as it promotes the proactive participatory community-based planning approach rather than an interventionist approach to rural development. The programme is operated in a premise that support cooperative governance and intergovernmental relations.
	Environmental Management Plan	It provides for mechanism and approaches to eliminate negative impact on the environment. The plan looks at the proposed development, assess and predict the impact and propose suitable mitigation measures. Environmental Management Plan have three broads categorise part of the land development application value chain dealing with the following stages:  In all three stages, the objective is to identify possible environmental impact and develop measures to minimise, mitigate and manage impact. The Environmental Management Plan works build on the Strategic Environmental Assessment (SEA) used to incorporate environmental aspects into a strategic planning processes and thereafter informs the Environmental Impact Assessment. The Environmental Management Plan provides environmental awareness and facilitate the prevention of environmental degradation and minimise impact when they are unavoidable.
	National Infrastructure Plan (2012)	Aims at transforming the economic landscape while simultaneously creating significant number of jobs, and to strengthen delivery of basic services. The National Infrastructure Plan further supports the integration of African economies. There are 18 Strategic Integrated Projects (SIPs) by looking at basic needs, economic opportunities, the state of existing infrastructure, required infrastructure and unlocking economic opportunities. Spatial imbalances, urban

		sprawl and fragmented settlement patterns are listed as challenges impeding economic growth and integrated infrastructure provision. Green energy in support for the South African economy; electricity generation, transmission and distribution for all; Integrated municipal infrastructure projects; Integrated urban space and public transport programme; agri-logistic and rural infrastructure; water and sanitation infrastructure; regional integration for African cooperation and development; expanding access to communication technology are few of the SIPs that are seen as critical for addressing the imbalances of the past, at the same time grow the economy and place the country as competitor to the other countries where investment opportunities permits.
Provincial sphere of government	Provincial Spatial Development Framework	It is spatial representation strategy that deals with the province. It integrates municipal spatial development of various municipalities and harmonise them in accordance with the spatial vision of the province. It also provides municipalities with a strategic vision that needs to be realised long term to ensure that municipal SDF are developed with a broader vision in mind. The provincial SDF recognises the different qualities of individual municipalities and ensure that each municipality perform according to its comparative advantage. The provincial SDF systematically allow for integrated planning, coordinated spatial initiatives, and structured infrastructure provision ensuring balanced economic benefits and social impact within the Province.
	Gauteng Integrated Transport Master Plan (2015)	Aims at providing an integrated and efficient transport system in Gauteng that promotes sustainable economic growth, skills development and job creation. It fosters quality of life, socially includes all communities and preserves the environment. The Integrated Transport Master Plan supports amongst others land use densification in support of public transport, mainstreaming non-motorised transport, strengthening intermodal freight hubs, and management of travelling distance. The implementation of the plan place emphasis to integrated operational initiatives, optimum utilisation of resources and promoting environmental awareness.
Local government	Integrated Development plan	It is a five-year plan compiled by a municipality to plan, prioritise, budget and facilitate the provision of identified needs to the community. It is a plan that articulate infrastructural assets of the municipality as well as engineering and social related services of the community. IDP becomes a service delivery tool that comprises of the SDF provision, sectorial plans, budgeting system, performance model and reporting system. It thus facilitates developmental duties of municipalities as provided for in Section 153 of the constitution. The effectiveness facilitation of developmental needs will assist government to realise different human rights

		as mentioned in the Bill of rights. Below figure summarised the role of the IDP:  Source: Own construction IDP put the executive and administrative powers and functions into a single inclusive and strategic plan used measure progress relating to service delivery.
	Municipal Spatial Development Framework (2004)	It is a spatial representation strategy that guides the spatial form of the municipality in promoting spatial justice, sustainability, resilience and efficiency. It uses structural elements to ensure there is integration in planning and development initiatives as provided for in various sector plans and policies within the three spheres of government. It provides for place making mechanism that spatially rationalising land uses with competing interests. It allocates developmental need identified through the IDP process in space and ensures there is harmony between spatial form, infrastructure provision, environment management and agriculture protection. The SDF strategically manages growth to curb sprawling and slum. It identifies and designate development areas that qualifies for incentives scheme in order to attract and retain investment.

Source: Own construction (2019).

Schoeman (2015) identified gabs that hinders municipalities in achieving their own set of development goals as well of those set by the provincial and national sphere of government. He indicated that South Africa, when developing policies, do so in silo. Such has created multiple policies that have duplicated provisions and at times contradictions. Kotze (2006:4/44) had made similar observation regarding the plethora of provincial and national environmental laws applicable to biodiversity conservation. He further stated that biodiversity legislation needed to be reconcile with the integrated Development Plan and Spatial Development Framework. Through this study, literature indicates that the fundamental challenge is that duplications and contradictions create uncoordinated development outcomes that are regressive in nature. The concept of integrated planning suggests that policy development, budgeting and implementation must be done in an orderly and coordinated manner.

Section 30 of SPLUMA provide for alignment of authorisation and integrated of authorisation, however, came short on providing for integrated policy development especially where planning for related land uses are dependent on each other for effective implementation. Urban and regional planning, transportation planning and environmental management cannot be separated whether by design or application.

In support of the latter submission, Schoeman (2015a:7) has proposed what can be refer as trinity planning technique whereby urban and regional planning, transportation planning and environmental planning become fundamentals municipal planning, land development and service delivery.

The table below indicates numerous policies guiding urban and regional planning, transportation planning and environmental management. These policies are seen to be essential in contributing towards achieving integrated planning and responsive programmes.

Table 2.3: Policies essential in linking spatial planning, transport planning and environmental management

Urban and regional planning	Transportation planning	Environmental management
Reconstruction and Development Plan (1994) Growth, Economic and Redistribution Strategy (1996) White Paper on South African Land Policy (1997) Urban Development Framework (1997) Rural Development Framework (1997) White Paper on Water and Sanitation (1997) White Paper on Local Government (1998) Green Paper on Development and Planning (1999) National Integrated Rural Development Strategy (2000) King Report II on Corporate Governance for South Africa (2002) White Paper on Spatial Planning and Land Use Management (2001) National Spatial Development Perspective (2003) Mining Charter (2003) Construction Charter (2005) ASGISA, 2006 National Spatial Development Perspective (2006) Housing Atlas (2006)	White Paper on National Transport Policy (1996) Moving South Africa (1996) Rural Transport Strategy for South Africa (2003) Draft minimum requirements for the preparation of integrated transport plans (ITP) (2007) NDOT: Public Transport Strategy (2007) NDOT: Public Transport Action Plan (2007-2010) National Land Transport Strategic Framework (2006-2011) (2002) (Draft) NDOT: Road Infrastructure Strategic Framework for South Africa (2006) NDOT: Rural Transport Strategy for South Africa (2007) NDOT: Implementation Strategy to Guide the Provision of Accessible Transport in South Africa. (2009) NDOT: Final Draft National Scholar Transport Policy (2009) NDOT: Transport Action Plan (2010)	Global Biodiversity Strategy: Guidelines for action to save, study and use earth's biotic wealth sustainably and equitably (Published by the WRI; IUCN and UNEP in 1992) Balancing the Scales: Guidelines for increasing Biodiversity's Chances through Bioregional Management, (Published by the World Resources Institute in 1996). Minimum requirements for the Classification, Handling and Disposal of Hazardous Waste (Second Edition (1998) (DWAF) Integrated Environmental Management Guidelines Series (1992) DEAT: An Environmental Policy for South Africa (Green Paper) (1996) White Paper on Integrated Pollution and Waste Management for South Africa (2000) Strategic Environmental Assessment in South Africa (2000) DEAT (2002a) *Screening, Information Series 1,* Department of Environmental Affairs and Tourism (DEAT), Pretoria. DEAT (2002b) *Scoping, Integrated Environmental Management,* Information Series 2, Department of Environmental Affairs and Tourism (DEAT), Pretoria. DEAT (2002c) *Specialist Studies, Information Series 4,* Department of Environmental Affairs and Tourism (DEAT), Pretoria. DEAT (2002d) *Impact Significance,* Integrated Environmental Management, Information Series 5, Department of Environmental Affairs and Tourism (DEAT), Pretoria.

Urban and regional planning	Transportation planning	Environmental management
Sustainable Human Settlement Planning: Resource Book (2008) (NDoH) Area Based Planning. Department of Rural Development and Land Reform (2008/2009) NPC: A Guide to the National Planning Framework (2009) NPC: Green Paper. National Strategic Planning (2009) Comprehensive Rural Development Programme. Department of Rural Development and Land Reform (2009) National Planning Commission Diagnostic Overview (2011) * National Development Plan (2012)* Integrated Urban Development Framework (2016) Draft National Spatial Development Framework (2019)	NDOT: National Transport Master Plan 2050 (NATMAP) (2010) NDOT: Road Freight Strategy for South Africa (2011) NDOT: Non-Motorized Transport (NMT) Policy (2012) NDOT: Department of Transport Strategic Plan (2012-2014) TRANSNET: Long Term Planning Framework (2012) PRASA: PRASA National Strategic Plan (2012) NDOT: Draft National Land Transport Strategic Framework (NLSF) (2014) NDOT: NATMAP Synopsis Report (Draft) 2015*	DEAT (2004a) *Overview of Integrated Environmental Management,* Integrated Environmental Management, Information Series 0, Department of Environmental Affairs and Tourism (DEAT), Pretoria. DEAT (2004b) *Criteria for determining Alternatives in EIA*, Integrated Environmental Management, Information Series 11, Department of Environmental Affairs and Tourism (DEAT), Pretoria. DEAT (2004c) *Environmental Impact Reporting,* Integrated Environmental Management, Information Series 15, Department of Environmental Affairs and Tourism (DEAT), Pretoria. Strengthening Sustainability in the Integrated Development Planning Process (2001) State of the Environment Reporting: Draft Guidelines for Local Municipalities (2005) DEAT Information Series (2004-2009) National Framework for Sustainable Development (2008)
**Refer to list of abbreviations for abbreviations.*		

Source: Schoeman (2015a:7)

Each policy is designed to provide processes, procedures, timeframes and reporting mechanisms. However, the implementation thereof, requires an expenditure framework that get to be integrated policy requirements. In support of integrating expenditure to policy, Section 21(n) of SPLUMA promotes the capital expenditure framework for the municipality's development programmes as depicted spatially. The MTEF Guideline, (2019:3-4) provides for fundamentals when reporting during the medium-term budgeting.

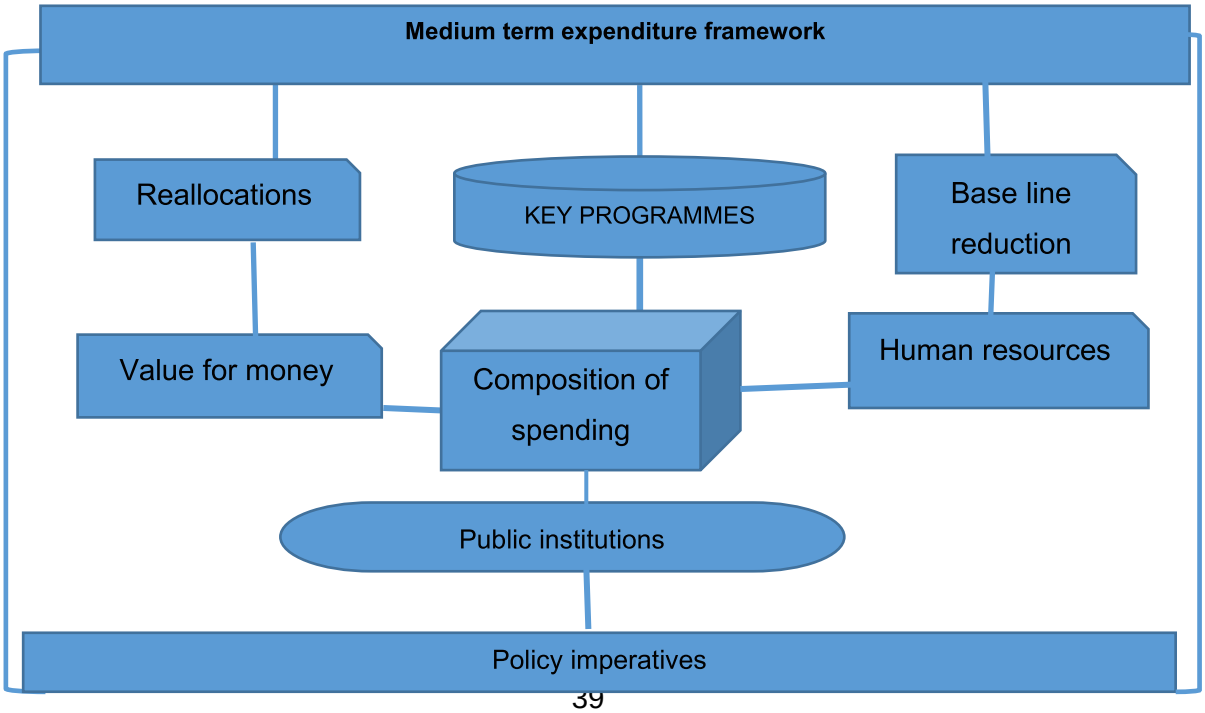


Figure 2.5: Linkage between expenditure and policy Source:

Source: Own construction (2019) adapted from the MTEF Guideline, (2019:3-4)

The above diagram demonstrates the significance of integrated planning and budgeting. It further indicates that structures financial resources and intellectual capacity plays an instrumental role in achieving the developmental objectives of the municipality. The MTEF Guidelines are provided to guide the planning, budgeting and reporting. Its further emphasis the collaboration of institution on related matters.

The relationship between government policies and expenditure framework may seem complex, however when the value chain and coordination link is understood, makes planning and budgeting necessary. The AG's Column (2014) reiterates the point of alignment, stating that effective implementation also depends on the commitment and direction from leaders with the spheres of government in adherence to the laws and regulations of the Country. Moroke (2015:134) indicate how policies, legislation and budgeting integration lead to compliance and implementation.

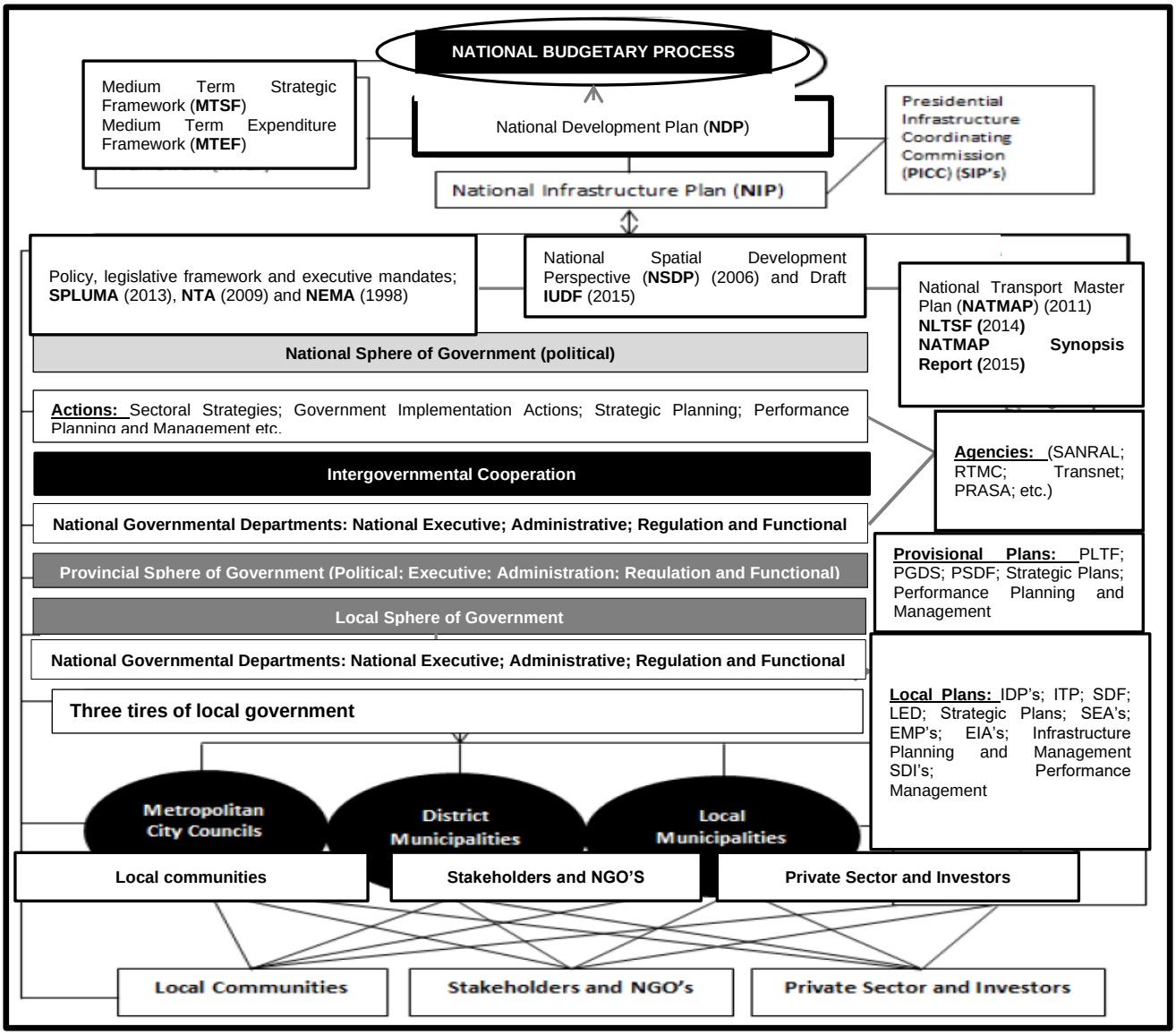


Figure 2.6: Integration of legislation, policies and budgeting for effective implementation *Source: Moroke (2016:134)*

There has been some new approach from the time the submission by Moroke was made in 2016, the South African National Treasury have introduced the Local Government Financial Management Accountability cycle and linkage with Municipal Standard Chart of Accounts.

2.3.4 Municipal Standard Chart of Accounts (mSCOA)

The MSCOA is the result of the Regulation issues part of the MFMA to enable the alignment of budget information with information captured in the course of the implementation of the budget.

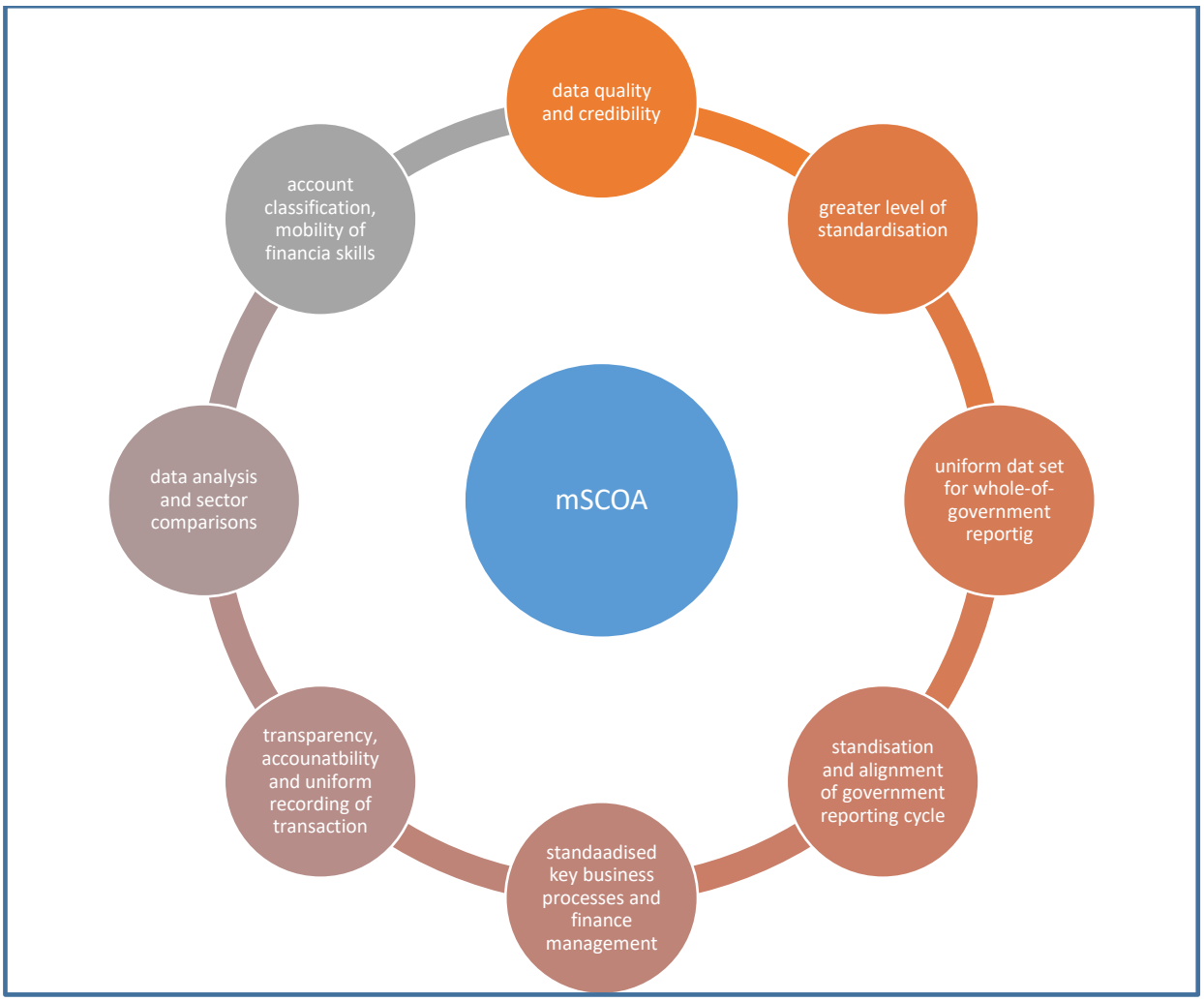


Figure 2.7: Alignment and standardization of financial business processes and system. *Source: Own construction (2019) as adopted from the Government Gazzette no.37577 requirements part of municipal planning.*

The National Treasury issued a MFMA Circular no.57 with a specific view to stabilise the overall systems of financial management and internal control operationally functional within municipalities (FMMA Circular no.80. 2016:8)

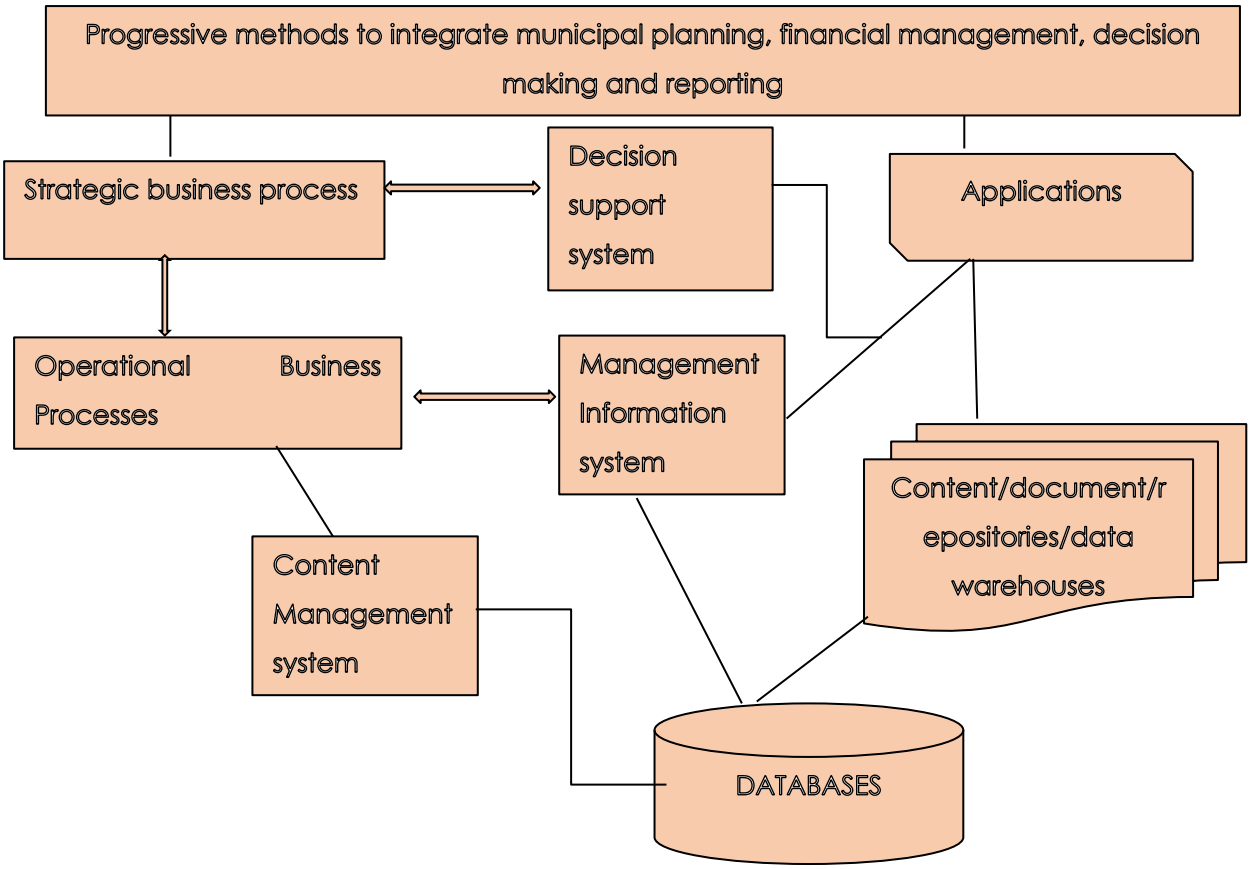


Figure 2.8: *Information Management System and Business Processes*

Source: Own construction (2019) adapted from the MFMA Circular 80

2.3.5 The Built Environment Performance Plan (BEPP)

Part of the policy framework lies the built performance plan as an instrument used to reinforce national outcomes and municipal objectives by providing incentives that result in productive, sustainable, inclusive and well governed cities. It is a plan developed to encourage the intended vision, policy direction, strategies and plans across the three spheres of government.

It provides for desired outcomes associated with what can be qualified as spatially transformed city.

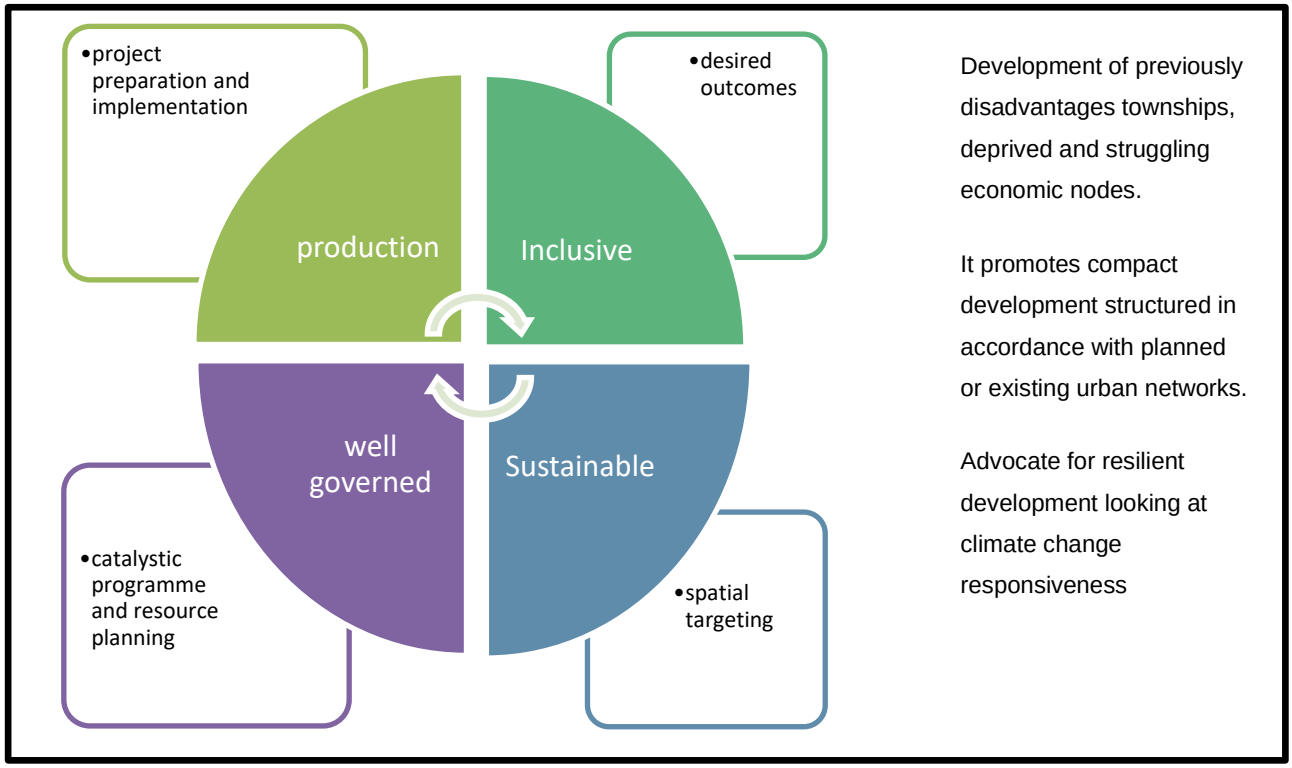


Figure 2.9: Desired spatially transformed cities

Source: Own Construction (2019)

The diagram below indicates the desired outcomes from different objectives as provided for in various policies mentioned figure. The BEPP can only be effective when the land use management system of the municipality is complete and fully functional as indicated in Figure 4.7. Municipalities must ensure that their plans are consistence with all policies as provided for by various departments in the national and provincial sphere of government. Therefore, as much as there are plethora of legislation regulating municipal planning, so as policies.

Despite the large number of applicable policies, collectively must respond to the overarching developmental vision of the country without undermining the environment and agriculture. This requires municipalities to have the intellectual capacity to filter through multiple provisions, reconcile common requirements and funnel them down into manageable programmes and projects essential to achieve the developmental goals as set by the municipality and those of the provincial and national government. The diagram below indicates the systematic relationship between policies and how they connect and respond to the overall government's developmental agenda.

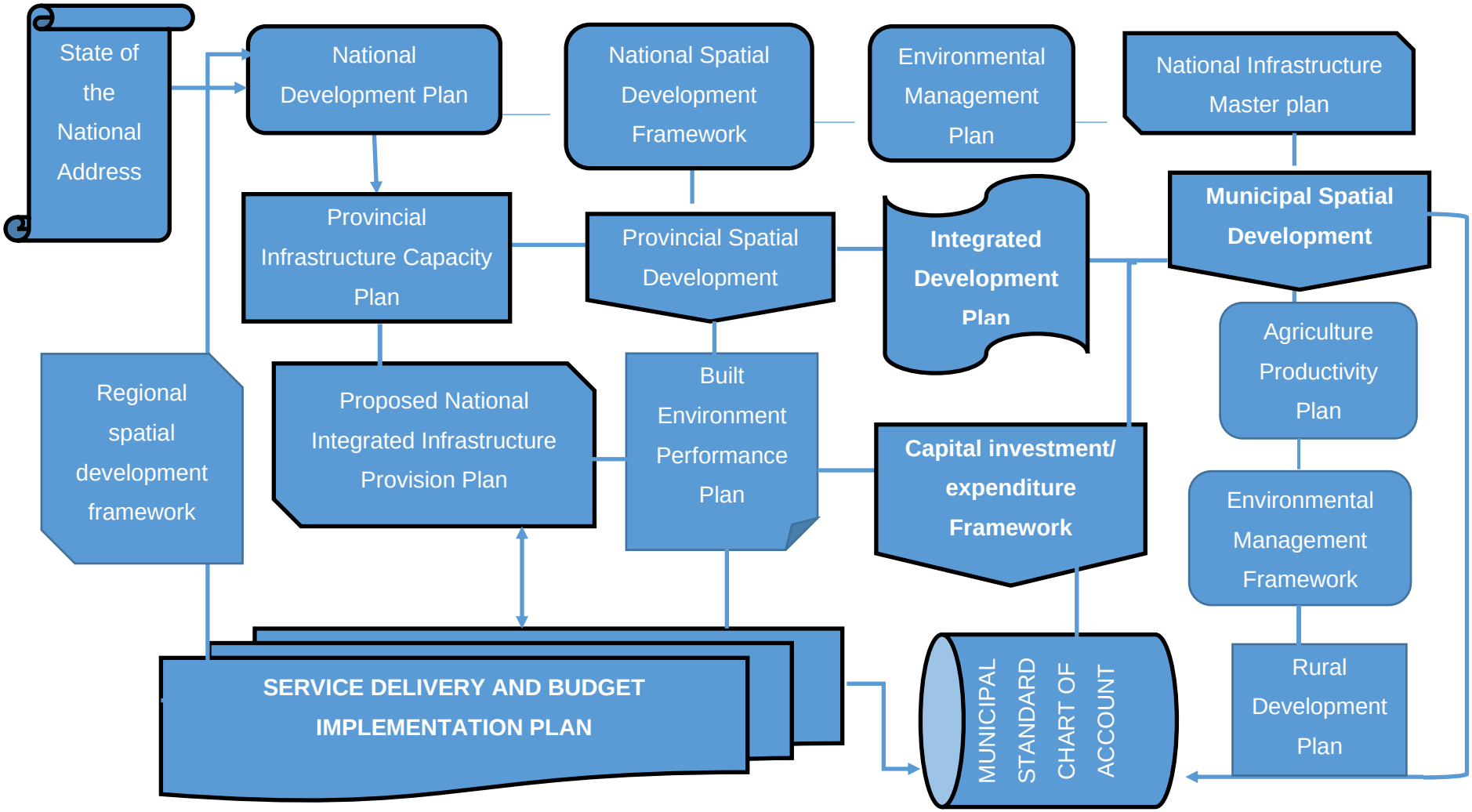


Figure 2.10: *Systematic and Coordinated Policy Framework-Comprehensive Municipal Planning Compliance System*
Source: Own construction (2019).

It is submitted that for municipalities to excel in municipal planning and rendering basic services must consciously consider adopting a progressive approach that systematically and coordinate all plans, policies and frameworks into a Comprehensive Municipal Planning Compliance System that rationalises and integrates all municipal functions making planning, prioritisation, budgeting, implementation, reporting, monitoring and evaluation efficient, convenient and manageable.

2.4 CONSISTENCY ASSESSMENT ON LEGISLATION INFLUENCING MUNICIPAL PLANNING

2.4.1 Legislation assessment

Having discussed both the legislative framework and policy framework applicable in South Africa, it becomes prudent to assess five pieces of legislation that guides municipal planning with the intention to unearth the challenges associated with the application and compliance thereof. The above-mentioned policies contain duplicated provisions, while the legislative framework indicated a close relationship between the three spheres of government which can easily create unintended conflict when legislating resulting in inconsistences and duplications.

The assessment of the five identified pieces of legislation assist to determine if relevant primary legislation contain provisions that can lead to duplications, ambiguities and inconsistences that can ultimately impact the ability of municipalities to perform their municipal planning function and render services. Below table analyses the content of legislation in light of the powers and functions of national and provincial government in legislating.

Table 2.4: Legislation assessment

Legislation	Long title	Objective	Definitions	Application of the act
National Environmental Management: Protected Areas Act 57 of 2003, as amended by National Environment Areas Amendment Act 31 of 2004.	is to provide for the protection and conservation of ecologically viable areas representative of South Africa's biological diversity and its natural landscapes and seascape; for the establishment of a national register of all national, provincial and local protected areas; for the management of those areas in accordance with national norms and standards; for intergovernmental co-operation and public consultation in matters concerning protected areas; for the continued existence, governance and functions of South African National Parks; and for matters in connection therewith.	to provide, within the framework of national legislation, including the National Environmental Management Act, for the declaration and management of protected areas; to effect a national system of protected areas in South Africa as part of a strategy to manage and conserve its biodiversity; to provide for a representative network of protected areas on state land private land and communal land; to promote sustainable utilization of protected areas for the benefit of people in manner that would preserve the ecological character of such areas; to promote participation of local communities in the management of protected areas, where appropriate; and to provide for continued	"Local Protected area" means a nature reserve or protected environment managed by a municipality. "Management" in relation to a protected area, includes control, protection, conservation, maintenance and rehabilitation of the protected are with due regard to the use and extraction of biological resources, community-based practices and benefit-sharing activities in the area in a manner consistent with the Biodiversity Act. "Management authority" in relation to a protected area, means the organ of state or other institution or person in which the authority to manage the protected area is vested. "Municipality" means a municipality established in terms of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998). "National protected areas" means a species nature reserve; national parks; or nature reserve or protected environment-managed by a national organ of state; or	Section 4 (2) states that the Act binds all organ of state; whereas section 5(1) states that the Act must be interpreted and applied in accordance with the national environmental management principles; and read with the applicable provision of the National Environmental Management Act. Section 8 of the Act advocates consistency in provincial, local matters and the Act. The act further defines which areas falls with the protected areas and legislation applicable thereof. Section 17 and 18 read respectively states the reasons for declaration and withdrawal of areas as protected areas. Section 37 of the Act deals with management of the protected areas. It states under 38 (1) the Minister, in writing must assign the management of a special nature reserve or nature reserve to a suitable person, organization or organ of state. Section 39 encourages the organ of state in which the assignment has made to, to prepare a management plan. The assigned organ of state in preparation of the management plan must consult

Legislation	Long title	Objective	Definitions	Application of the act
		existence of South African National Parks.	which falls under the jurisdiction of the Minister for any other reason; “Provincial protected areas” means a nature reserve or protected environment-managed by a provincial organ of state; or which fall under the jurisdiction of a province for any other reason	municipalities, other organs of state, local communities and other affected parties which have interest in the area. The management plan must take into account any applicable aspect of the integrated development plan of the municipality in which the protected area is situated. Furthermore, section 40(2) states that the management authority must manage the area exclusively for the purpose in which the area was declared (mindful of the concept of ultra vires) and in accordance with 40(2) (b) (iv) any applicable municipal by-laws. The Act make provisions under section 41(2) that a management plan must at least contain- i. the terms and conditions of any applicable biodiversity; ii. a coordinated policy framework; iii. such planning measures, controls and performance criteria as may be prescribed; iv. a programme for the implementation of the plan and its costing; v. procedures for public participation, including participation by the owner (if

Legislation	Long title	Objective	Definitions	Application of the act
				applicable), any local community or other interested party; vi. where appropriate, the implementation of community-based natural resources management; and vii. A zoning of the area indicating what activities may take place in different section of the area, and the conservation objective of those sections**.**
Assessment of the long title, objective and the definition of the Act under review:				
The definition is relevant recognizing municipalities as the third sphere of government as written in Section 40 (1) of the Constitution. Further, the legislation under review observe the formation of municipalities in terms of the Local Government: Municipal Structures Act, 1998 (Act No.117 of 1998). The long title of the Act embraces the fact that there are key role players who have equal but with competing interest in the management of land, hence the object of each role and associated function is clearly defined. The legislation intent is clear. Its focus is on the public interest and the protection of the areas listed as areas under protection for preservation and conservation purposes. The object of the act is to promote the definition of sustainable environment. The Act is not a monopoly of one department within a sphere of government but fully conscious of the role and functions of various departments with other spheres of government, acknowledging the concept of interrelatedness yet distinct nature spheres of government. Thus, the approach makes the long title, object and definitions relevant and constitutionally sound				
Assessment of the applicability of the Act:				
The applicability of the Act is integrative and support the notion of alignment of relevant policies and efforts that exist with the spheres of government. It is also mindful of regulating beyond the scope of the act as mentioned under Section 40 (2). It should be noted that the planning measures, controls and performance criteria as stated under 41 (2) (iii) must be reflected in the Spatial Development Framework and the Land Use Scheme of the Municipality. Bearing in mind that only municipality under municipal planning function has the sole mandate to deal with zoning of any land. Therefore, the zoning mention under 41(2)(v) must be incorporated as a use zone category in a land use scheme with development controls as directed by infrastructure carrying capacity or availability with the municipal space.				

Legislation	Long title	Objective	Definitions	Application of the act
It becomes essential that the authority whom the assignment has been made in terms of Section 38, plays an active role during the preparation of the Municipal Spatial Development Frameworks, Land Use Scheme and other subsidiary policies that may have impact of the identified protected area. By playing an active role in the municipal planning processes, the Act too become participatory in nature and there will be no room for inconstancies or non-compliance.				
The overall assessment of the National Environment Management: Protected Areas Act 57 of 2003 as amended.				
The Act is consistent with the Constitution of the Republic of South Africa and the Spatial Planning and Land Use Management Act, 2013 as far as the municipal planning function is concerned. Both Acts can stand together and can be obeyed at the same time by relevant authorities and interested persons. In light of the above, it is recommended that their alignment or integration of processes as per Section 30 of SPLUMA be explored to ensure section 38, 40 and 41 of the Protected Areas Act dealing with a management plan is correctly synchronised with the provisions in the municipal by-law, land use scheme and Spatial development framework. Such synchrony will provide synergy in application and reduce confusion during the development application phase. There should not be any plan dealing with zoning or conferring of developmental right outside the land use scheme of the municipality.				
The Subdivision of Agricultural Land Act, 70 of 1970,	to control the subdivision and, in connection therewith, the use of agricultural land. The Act is a national piece of legislation under the supervision of the Minister responsible for the Department of Agriculture.		**agricultural land**' means any land, except Land situated in the area of jurisdiction of a municipal council, city council, village council, village management board, village management council, local board, health board or health committee, and land forming part of, in the province of the Cape of Good hope, a local area established under section 6(1)(i) of the Divisional Councils Ordinance, 1952 (Ordinance 15 of 1952 of that province), and, in the province of Natal, a development are as defined in section 1 of the Development and Services Board Ordinance, 1941	Agricultural land shall not be subdivided unless the Minister has consented in writing to the subdivision, vesting, registration, sale, advertisement, establishment or enlargement concerned. Section 4 (1) state that- Any application for the consent of the Minister for the purposes of section 3 shall be lodged with the Secretary and shall be in such form and be accompanied by such plans, documents and information as are determined by the secretary. The minister may in his discretion refuse or grant any such application, and if he grants

Legislation	Long title	Objective	Definitions	Application of the act
			(Ordinance 20 of 1941 of the last-mentioned province), and in the province of the Transvaal, area in respect of which a local are committee has been established under section 21(1) of the Transvaal Board for the Development of Peri-Urban Areas Ordinance, 1943 (Ordinance 20 of 1943 of the Transvaal) but excluding any such land declared by Minister after consultation with the executive committee concerned and by notice in the Gazette to be agricultural land for purposes of this Act; (a) Land- Which forms part of any area subdivided in terms of the Agricultural Holdings (Transvaal) registration Act, 1919 (Act 22 of 1919); or Which is a township as defined in section 102 of the Deeds Registries Act, 1937 (Act 47 of 1937), but excluding a private township as defined in section 1 of the Town Planning Ordinance, 1949 (Ordinance 27 of 1949 of Natal), not situated or a development area referred to in paragraph (a)	it, grant it in such condition as he deem fit, including conditions as to the purpose for which or the manner in which the land in question may be used. The minister may withdraw any such condition and, if it has been registered against the title deed of the land, direct that it be cancelled.

Legislation	Long title	Objective	Definitions	Application of the act
Assessment of the Definition "agricultural land".				
In today's democratic government the land described by the definition above no longer exist. South Africa comprises of wall to wall municipalities, meaning there is no land that falls outside the jurisdiction of a municipality. Furthermore, those pieces of legislation referred to, are subject of the doctrine of implied repeal as so many pieces of legislation have been assented after the 1970 Act.				
Assessment of the definition of "Local Government"				
The Constitution applicable today in South Africa is called the Constitution of the Republic of South Africa, 1996 and it is not an Act. Section 151 of the Constitution deals with local government and provide for the status of municipalities. The local government is made up of categories of municipalities, which in today's definition municipalities are inherently also known as local authorities with a different scope and purpose than what the definition under the Act 70 of 1970 refers to. Therefore, a mention of the Constitution 1961 and the local authority distort the relevance of the true meaning of local authority, making the definition irrelevant and redundant.				
Assessment of chapter 3 and 4 of the Act 70 of 1970				
The definition of the agricultural land is more territory and administrative and not developmental in nature. When the act says 'agricultural land shall not be subdivided' and not stating purposes in which land shall not be subdivided for, it provides developmental challenges especially in light of a definition of 'agricultural land' that does not indicate what is or how to identify agricultural land or types of agricultural activities that are of agricultural importance. Section 4 of the Act, boarders on interpretation, in practice over the years from government, section 4 is interpreted as saying the Minister has the absolute power over the agricultural land. Perhaps that can be argued true in light of the old Constitution and other pieces of legislation used to define agricultural land. However, when using the current applicable Constitution, the Minister's absolute jurisdiction is left "without substance" due to the constitutional reform that took place in 1996 giving municipalities in terms of section 151(3) and (4), respectively, the right to govern, on its own initiative, the local government affairs of its community, subject to national and provincial legislation as provided for in the Constitution. Furthermore, stating that the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its power or perform its function				
Overall assessment of the Act				
It is no doubt that agriculture plays a significant role for the Country's food security, as a result regulating agriculture plays a pivotal role to cater for todays and future generation. However, there is a need to balance all the competing uses. When dealing with agriculture alone, the strong argument to protect agricultural land is there, same argument is valid				

Legislation	Long title	Objective	Definitions	Application of the act
when dealing with environmental elements in isolation. It can never be true that agriculture alone is essential to hold the country's growth in a sustainable and progressive manner. All developmental factors work well when placed together. The extent and scope and substance of the Act need to be relevant for today's democratic governance. The Act need to be explicit on what is agricultural land, providing attributes of agricultural land, level of importance and uses that can be permitted on agricultural land. Furthermore, the act must include the rehabilitation of agricultural land or alternative land uses once the agricultural land has reached its fertile capabilities. The above will require systems/techniques relevant to soil testing and feasibility studies taken frequently to ensure agricultural land is always protected and where land has lost its agricultural strengths possible uses must be explored to avoid any land to lie fallow. The legislation must prescribe period associated with constant soil testing. The role and responsibilities of each sphere of government must be clearly stipulated. The phases of value chain associated with agriculture need to be clearly defined. The Regulations and subservient policies required to manage agricultural land must be stated. The qualification and expertise of government official in agriculture must be stipulated to ensure that findings and strategies on agricultural land are sound. A legislation on agriculture must promote and adhere to Chapter 3 of the Constitution and the intergovernmental Relations Framework Act read together with Spatial Planning and land Use Management Act. Since agriculture is the land use and agricultural land is categorized as a use zone regulated by a municipal Land Use Scheme, the national sphere of government must provide permissible uses suitable for agricultural purposes part of the Land Use Scheme and Spatial Development Framework. The above suggestions will mean the Act defines and provides for norms and standards relevant to the manner in which fertility level of agricultural land is treated. Further indicate which level of agricultural land a sphere of government may regulate. And also identify agricultural activities that may require a consent of the Minister. The consent of the Minister does not mean the Minister has absolute authority over the municipality, however it should be treated as comments significant to the protection of the use of agricultural land. Where mitigating measures can be explored the Minister can negotiate in good faith with the municipality and the developer. It will require the Minister to have a system to monitor and evaluate the manner in which agricultural land is being used. The Minister will have to play a significant and strategic role in the development of the Spatial Development Plan in the three sphere of government ensuring agriculture is well represented and within context. Levels of agricultural suitability with associated permissible uses must be translated into development controls to form part of Land Use Schemes of municipalities. Bearing in mind that a Land Use Scheme, is the only legal instrument that has the authority and intelligence to confer developmental right to any land or property found within municipal area of jurisdiction. **Recommendation:** In light of the above, it is proposed that the Subdivision of Agricultural Land Act 70 of 1970 together with it amended version be repealed. A framework legislation that will recognize the Constitution of the Republic of South Africa and also recognized that all land falls within the jurisdiction of a municipality to be developed. The piece of legislation proposed				

Legislation	Long title	Objective	Definitions	Application of the act
must be progressive and developmental in nature, be able to provide guidance relevant to deal with agricultural activities recognizing the ever-changing climate conditions as well as growing population in need of suitable agricultural land essential to food security. The legislation must be pro-development and promote integrated planning and alignment of processes to avoid duplications and unnecessary delays. Furthermore, to clearly indicate functions that can be decided upon and concluded at the municipal level so that there is efficiency and compliance.				
The Mineral and Petroleum Resources Development Act, 2002	Is *to make provision for equitable access to and sustainable development of the nation's mineral and petroleum resources; and to provide for matters connected therewith.*	to- Substantially and meaningfully expand opportunities for historically disadvantaged persons, including women, to enter the mineral and petroleum industries and to benefit from exploitation of nation's mineral and petroleum resources; Promote economic growth and minerals and petroleum resource development in the republic Promote employment and advance the social and economic welfare of all South Africans.	"Land" includes the surface of the land and the sea, where appropriate. "Owner" in relation to land means the person in whose name the land is registered; or if it is land owned by the State, means the State together with the occupants thereof. Mining area in relation to a mining right or mining permit, means the area for which that right or permit is granted.	As extracted from the Act, the Act gives the Minister of Minerals and Energy the custodianship of minerals and petroleum resources. The minister may: - Grant, issue, refuse, control, administer and manage any reconnaissance permission, prospecting right, permission to remove, mining right, mining permit, retention permit, technical co-operation permit, reconnaissance permit, exploration right and production right; and In consultation with the Minister of Finance, determine the levy, any fee or consideration payable in terms of any relevant Act of Parliament. The Minister in this Act is responsible for the implementation of the Act, as the act provides that the minister may appoint Regional Managers for a purpose amongst other processing of various mining related applications and managing consultation process thereof. No fault can be found in

Legislation	Long title	Objective	Definitions	Application of the act
				the custodianship of the Act, however the provisions leading to the implementation of the Act is what under review leading us to the overall assessment of the Act.

Assessment of the Definitions

It should be noted that the Spatial Planning and Land Use Management Act (SPLUMA) also has definitions of land and owner. SPLUMA defines: -

“land” means any erf, agricultural holding or farm portion and includes any improvement or building on the land and any real right in land; and

“Owner” means the person registered in a deed’s registry as the owner of land or who is the beneficial owner in law.

Whereas, the Mineral and Petroleum Resources Development Act, 2002, defines:

“Land” includes the surface of the land and the sea, where appropriate.

“Owner” in relation to land means the person in whose name the land is registered; or if it is land owned by the State, means the State together with the occupants thereof.

Therefore, the two pieces of legislation define land and owner differently. It becomes important to read, understand the definitions in a context in which they are made, provided or intended. Inconsistency is not found as context prevails over similarity

Overall assessment of the Act

As a starting point, section 92 (1) and (2) of the Constitution, a Minister as the member of the Cabinet is accountable to Parliament for the exercise of his/her powers and the performance of the associated functions. This provision does not exempt the minister to comply with any other law. Therefore, a piece of legislation can never be applied alone exclusive of other laws. Selective reading of legislation provides distorted outcomes detriment to municipal planning and service delivery.

Every land use takes place within the municipal areas of jurisdiction and a mine is classified as a land use, which mining is the process of extraction mineral under the ground. All structures above surface for mining purposes are being built on areas administratively managed by a municipality irrespective of ownership.

Municipalities have in terms of Section 156 of the Constitution given mandate to administer their local government matters listed in Part B of Schedule 4 and Part B of Schedule 5, and also to administer any other matter assigned to them by national or provincial legislation. Municipalities have the right to exercise any power concerning a matter reasonable for, or incidental to, the effective performance of assigned functions.

The Local government: Municipal Systems Act, Act 32 of 2000 (MSA), has reiterated section 41 of the Constitution. The MSA is the national piece of legislation drafted amongst others to provide for core principles, mechanisms and processes that are necessary to enable municipalities to move progressively towards the social and economic advancement of local communities. This statement complements the objects of the Mineral and Petroleum Act.

However, the execution of the act seems different and problematic. Mineral and Petroleum Act recognises environmental laws and plans. The exclusion of any other law applicable can easily be construed as providing that only the protection of environment is essential in mining activities. That is why mining rights historically were granted outside municipal planning.

In accordance with the Constitution, section 11 (2) of MSA stipulates a number of activities that a municipality must do, that include developing and adopting policies, plans, strategies and programmed, including setting target for delivery; promoting and undertaking development; implementing applicable national and provincial legislation and its by-laws; providing municipal services to the local community; preparing, approving and implementing its budgets; imposing and recovering rates, taxes, levies, duties, service fees and surcharges on fees; promoting a safe and healthy environment; and do anything else within its legislative and executive competence.

The existence of national and local government is intertwined when reading section 44 (2), 146(2) (c) and 152(1) respectively. Furthermore, Section 151(4) made what can be seen as a cautionary statement, stating that the national or a provincial government may not compromise or impede a municipality's ability or right to exercise its powers or perform its function.

It should be clear that protection of the environment is indeed important, so as the agriculture for food security and so forth. What will help a great deal is to have a national legislation that acknowledges that land is a limited resource, tasked with a burden of carrying all competing interests whom individually must strive to the greater objective. Such burden on land, requires an institution that will play a moderator role, facilitating development to ensure all interest work together for the good.

Only municipalities are the closest to the community. Municipalities are the implementing agent, responsible for the provision of services to the community, also to ensure there is noticeable growth and development essential to contribute toward the Gross domestic product of the Country. Municipality through their plans and programmes must find a mechanism to balance the social, economic, environment and spatial need of the locals and the country at large, making sure that the provision of the Constitution and various legislation are satisfied in a fair and equitable manners. The success of the local spills over national to constitutes collective positive growth.

Recommendation:

The Act must be reviewed and improved to recognize powers and functions of the municipality and to adhere to municipal processes in so far as land use management system, Land Use Scheme and Spatial Development Framework is concerned. It is important to note that from municipal point of view developmental rights are given to the erf not an owner. Hence documents part of land development application includes proof of ownership to ensure the person applying to the change of land development right is indeed the owner. The owner may appoint a person to apply on his behalf, even then a Power of Attorney, company resolution is required. In an even where a property is bonded, a bond

holders consent and other personal servitude such as township owner are required. The minister in revising the legislation must work together with the municipality to deal with various requirements. In the court case judgment on powers and function of the national government (LAND USE PLANING ORDINANACE, 1985) v Municipality - MACCSAND (Pty) Ltd v CITY OF CAPE TOWN 2012 (4) SA 181 (CC). The judgment emphasises that powers and functions of the municipality, stating that all municipal planning decision that encompass zoning and subdivision, no matter how big, lie within the competence of the municipality.				
The National Land Transport Act, 2009	Provide further the process of transformation and restructuring the national land transport system initiated by the National Land Transport Transition Act, 2000 (Act No.22 of 2000; and to provide for matters connected therewith	to – further the process of transformation and restructuring the national land transport system initiated by the Transition Act; give effect to national policy Prescribe national principles, requirements, guidelines, frameworks and national norms and standards that must be applied uniformly in the provinces and other matters contemplated in section 146 (2) of the Constitution; and to consolidate land transport functions and locate them in the appropriate sphere of government.	"planning authority" means a municipality in relation to its planning functions	In terms of Section 3 of the Act, this Act applies throughout the Country. Al three spheres of government have a role to play in this Act. Section 5 of the Act defines the role of the Minister, which amongst others is to: - i. Monitor all provincial land transport policies and frameworks and all transport planning required or envisaged by this Act, to see that they are developed, prepared and formulated within the ambit of the national transport policy, and take appropriate action where necessary to promote compliance, subject to the constitution and the Intergovernmental Relation Framework Act,2005 (Act No.13 of 2005) ii. Co-ordinate between the spheres of government and public entities with a view to avoiding duplications of effort and resources;

				Section 5(6) states that when a province or municipality cannot or does not fulfil an executive obligation in terms of matters relating to public transport, the Minister may intervene by taking the appropriate steps to ensure the fulfilment of that obligations, including issuing a directive to the provincial executive or municipal council, describing the extent of the failure to fulfil its obligations and stating any steps required to meet its obligation and the provincial executive or municipality must comply with such directive. Section 9 of the Act gives the MEC various activities to perform, including: - i. the responsibility to publish provincial land transport policy after consulting with planning authorities; ii. Assisting municipalities that lack the necessary staff or resources in meeting their responsibilities and performing their functions and duties with regard to land transport; iii. Ensure that there is a link with matters having an impact on transport in the province, including land use management, environmental issues, population growth, economic

				development and investment in infrastructure, to facilitate integration and efficient transport; iv. Promote intergovernmental relations with the land transport environment v. Co-ordinate transport initiatives within municipalities, and other stakeholders in transport filed by establishing coordinating structures or by other methods. Chapter 2 of the Act deals specifically with institutional arrangements and intergovernmental relation for land transport within the three spheres of government. In section 12(1) for example, the Act states that- i. the province may enter into an agreement with one or more municipalities in the province to provide for joint exercise or performance of their respective powers and functions and may establish a provincial entity or similar body in this regard, subject to the Constitution; ii. One or more adjacent municipalities may agree on the joint exercise or performance of their respective powers and functions

				contemplated in the Act, or may establish municipal entities in terms of the Systems Act for this purpose; iii. If the spheres of government cannot agree, subject to this Act, on the division of land transport function between them, they must act in a manners and a spirit consistent with the principles of co-operative government prescribed by section 41 of the Constitution and apply the provisions of the Intergovernmental Relations Framework Act.2005 (act No. 13 of 2005). Chapter 4 of the Act plays a significant role in the land use management system of the municipality. Section 31 of the Act deals with transport planning, stating that land transport planning must be integrated with the land development and land use planning processes, and the integrated transport plans required by this Act are designed to give structure to the function of municipal planning mentioned in Part B of Schedule 4 to the Constitution and must be accommodated in and form an essential part of the integrated development plans, with due regard to legislation applicable to local government, and its

				integrated transport plan must form the transport component of the integrated development plan of the municipality. Section 38 (2)(a) states that no substantial change or intensification of land use on any property may be undertaken without the written consent of the planning authority; and Section 38 (3) states that despite any law to contrary, any authority with responsibility for approving substantial changes in land use or development proposals which receives and application for such change or intensification, must within 14 days of receipt of such application and prior to considering or ruling on such application, submit such application to the relevant planning authority for its assessment and determination of the impact of the application on the integrated transport plan and public transport services. Section 38 (4) further states that the planning authority must, within 90 days- (a) Approve or refuse an application for a change or intensification in land use or

				development proposal submitted in terms of subsection 3; and (b) Submit its written decision contemplated in (a) and any objections with respect to such application, including directions or conditions for compliance with the integrated transport plan, to such authority vested with responsibility for considering the application. Section 38 (9) states that any person who undertakes a development involving a change or intensification in land use or development proposal without the approval of the planning authority under this section, or contrary to a condition imposed by such an authority, its guilty of an offence and is liable on conviction to imprisonment for a period not exceeding six months; while subsection (10) states that- (a) Where a building or structure has been erected without the approval of a planning authority in circumstances where such approval should have been obtained under this section, or is in conflict with a condition imposed under this section, the relevant authority may apply to the High Court having jurisdiction for an order- compelling the

				owner of the property to demolish or remove the building or structure at the owner's cost.

Overall assessment of the Act

The National Land Transport Act is within it scope and mandate, it did not legislate beyond its powers. The Constitution of the Republic of South Africa has been observed especially the role and responsibilities of the three spheres of government, recognizing the distinctive nature but inter-dependent and interrelatedness. The provision of the Act in deed conform to section 41(1) read together with (e) and (h) respectively, stating that all spheres of government and all organs of states within each sphere of government must respect the constitutional, status, institution, powers and functions of government in other spheres, cooperate with one another in mutual trust and good faith by fostering friendly relations; assisting and supporting one another and coordinating their actions and legislation with one another.

Therefore, the Act in terms of drafting, it seen to have met the constitutional scrutiny in so far as its scope and focus as well as adhering to constitutional essence and intent.

The Act is also consistent with SPLUMA in so far as Section 2(2) read together with section 30 and 33 respectively which deals with the application of the Act, alignment of authorization and status of municipalities in so far as municipal planning is concerned.

The municipalities are recognized as the planning authority as per the definition and have been given powers to exercise on matters affecting or within their competency especially impacting on land uses or municipal planning.

LEGISLATION	LONG TITLE	OBJECTIVE	CHAPTER	APPLICATION OF THE ACT
The Rationalisation of Local Government Affairs Act, 1998		To rationalise the legislative and administrative framework within which the local sphere of government may conduct its affairs in relation to amongst other things- i. Procedure for making bylaw; ii. Effect of a standard bylaw	The Act has 7 chapters: Chapter 1: Definitions, purpose and application. Chapter 2: Status, powers, functions and duties of municipalities. Chapter 3: By- laws, Standards by-laws and Regulations Chapter 4: Matters relating to personnel, Councillors and Mayors	Section 3(1) states that any person applying or interpreting this Act must- (a) Give a construction of its provisions in a manner that- i. Is consistent with the statements of purpose set out in section 2; and ii. Take account of the particular purpose, role and circumstances of the local sphere of government

		iii. The MEC'S power to issue regulations iv. Contents of the regulation v. Procedure for issuing regulation	Chapter 5: Designated Officers, Execution of work, Inspections, Compliance procedures and Related Offences. Chapter 6: Procedure of goods and services by municipalities Chapter 7: Restriction of Access to public places for safety and security purposes	as contemplated in the Constitution and any other law. (2) the provision of this Act must be considered- (a) in the light of any other law governing a municipal council; and in a manner that favours a reasonable interpretation of the relevant laws that avoids conflict between them over and interpretation that brings them into conflict.
Assessment of the provisions/ sections.	**Chapter 2- has been confirmed by the Constitution and provided for in SPLUMA, MSA, MFMA and other pieces of legislation. This** legislation is not adding anything significant to the status, powers, functions and duties of municipalities. Chapter 3- is provided and covered by the Constitution and the MSA. Chapter 4 -is been covered or swallowed by the Municipal Structures Act. No municipality appoint, allocate powers and functions of the Municipal Council, Executive Officer and miscellaneous provision relating to the Mayors. Chapter 5- is covered by the Spatial Planning and Land Use Management Act and the Criminal Procedure Act. There is no need to have this Act dealing with offences, compliance and law enforcement. Chapter 6- has been covered by the Municipal Financial Management Act. No municipality uses the ROLGA when deal with supply chain management. Chapter 7- is the only chapter in the Act that is found lost and against spatial planning, transport planning and land use management.			
OVERALL Assessment of the Act	The ROLGA is only applicable in the Gauteng Province. It adds no value to municipalities. Municipal planning, powers and functions of municipalities have been adequately addressed by the Constitution and other various legislation such as MSA, MFMA, SPLUMA and Municipal Structures Act. Chapter 3 of ROLGA provides time frames and provisions not adequately benefiting municipalities. Municipalities must be able to determine how to deal with timeframes associated with public participation. Time frames and procedures associated with Public participation can differ depending on the subject policy/law in question. Chapter 7 deals with restriction of access on public places (roads). The Constitution grants every citizen of the country different rights. SPLUMA provide development principle such as spatial justice whereby municipalities must redress spatial injustices. Chapter 7 encourages that public roads can be enclosed as a safety and security measure allowing few financially sound individuals to close multiple streets for their own safety benefit. People outside			

	the enclosed area can only be granted permission to use or enter the enclosed public road by the security guards when producing identification documents or filling a register or fingerprinted. There are other enclose areas where a boom gate has a CCTV and only a push in button with a camera is used to access the enclosed public road. This chapter does not provide mechanism to deal with who should deal with illegal enclosures and there are no penalties that can be enforced. This chapter has no due regards to municipal spatial plans, transport plans and land use management. Municipal Planning is made difficult by this legislation. This Chapter is impeding the principle of free movement, mobility, accessibility, integration and functionality. These principles are applied to ensure neighbourhood are orderly and functional. Furthermore, government services are also affected by these enclosures as ambulances, police do not have digital maps or any knowledge of the public roads that have been closed though ROLGA. The travelling distance becomes longer due to road closures. Recommendation: The Act must be repealed is serve no purpose. As chapter 2,3,4,5 and 6 have been addressed by other legislation as guided by the Constitution. Chapter 7 deals with perpetuated spatial injustices. However, municipalities through a bylaw may address the issues that deal with temporary closure of public places for safety and security purposes. The township layout approved must be designed in a manner that discourages crime, sprawl and vagrants. Land use planning and spatial planning must ensure urban design is integral so that buildings and boundary walls are not supporting crimes. Safety and security are not the core competency of municipalities but the function of province and national of government. The national and provincial sphere of government must play their role ensuring that citizens are safe and secured. This can be done by employing more qualified and trained security personnel, placing CCTV, supporting community policing forum. National and provincial government must explore other measures that can ensure citizens of this country are safe. ROLGA has made South African Police Service (SAPS) support road closures as the Act seeks only SAPS to render comments. This is not correct hence the proposal that the act must be repealed. Once the act is repealed municipality may decide to develop a bylaw dealing with temporary closure of public places(roads) and SAPS will have to take over and proper perform their duties of safety and security and not hide behind the provision of the act. Road closures do not provide long term safety and security solutions but rather a temporary or false sense of security which is not fair to the residents of this country.

Source: Own construction (2019)

Some of the abovementioned legislation were also tested in the courts of law, whereby the application and interpretation of powers and function as provided for either in the provincial or national legislation were contested. The contestation was always about the authority to make decisions on land development applications matters. The decision making on land development applications in this instance refers to the rezoning or township establishment applications. The land development application processes form part of municipal planning.

The following discussion looks at various case laws with an intention to give context to the objective of the study and to place jurisdiction on municipal planning as a function as well as the impact national and provincial legislation has on service delivery initiatives.

2.4.2 Case law relevant to municipal planning

This section addresses various court cases that took place from 2008 to 2016 on the constitutional legislative and executive function or competence of each sphere of government insofar as municipal planning is concerned. This will give a rationale to the hypothesis tested in the study, suggesting that inconsistencies in national and provincial legislation attribute to inefficiencies in municipal planning and service delivery processes (see 1.6).

Since the Constitution gives authority to the legal standing and powers of the local government as the third sphere of government, municipalities have gained confidence to administer matters entrusted upon them by the Constitution. There are national pieces of legislation that empower municipalities to structure and create effective systems that are essential in performing their mandate, which include the Municipal Structures Act, the Municipal Systems Act, and the Municipal Financial Management Act.

With the Constitution clearly stating the legislative and executive powers and functions of each sphere, there are instances where the national or provincial sphere of government has exercised powers outside the Constitutional framework. For example, in 2008, twelve years after the assertion of the Constitution, the Supreme Court of Appeal had to make a judgement on the matter that affected the constitutionality of the powers of the Minister of Agriculture and Land Affairs as conferred in the pre-constitution order by the Subdivision of Agricultural Land Act. The following subsections are summaries of the court cases where judgement was made on powers and functions of each sphere on municipal planning matters.

2.4.2.1 Case 1: Powers and function of the national government (Minister) v the municipality – Wary Holdings (Pty) Ltd versus Stalwo (Pty) Ltd: CCT 78/07 [2008] ZACC 12

The Minister of Agriculture and Land Affairs joined as the third respondent in the case between Wary Holdings (Pty) Ltd versus Stalwo (Pty) Ltd and another. The Minister sought to persuade the court that ministerial consent was a prerequisite to every agreement of purchase and sale in respect of every subdivision of land that prior to 1994 was classified as agricultural land, even if the land fell within the area of jurisdiction of a municipality that had approved the relevant zoning and subdivision.

During the Constitutional Court proceedings, Judge Yacoob, gave a brief legislative history on the interpretation of the proviso that led to the amendment of the definition of agricultural land. He dealt with Proclamation R.102 of 1994 that inserted the temporary assignment of the administration of certain laws to an appropriate authority within the jurisdiction of the national government in terms of section 235(9) of the Constitution.

The insertion allowed the amendment of the Subdivision of Agricultural Land Act and the definition of agricultural land. The proviso reads:

> *[P]rovided that the land situated in the area of jurisdiction of a transitional council as defined in section of the Local Government Transition Act, which immediately prior to the first election of the members of such transitional council was classified as agricultural land, shall remain classified as such.*

The proviso was brought in at the time when local government was being restructured as required by the Local Government Transition Act in terms of the Interim Constitution (200 of 1993).

The minister interpreted the proviso to mean minister's consent would remain an essential prerequisite to a valid sale even after the transitional council was replaced by more permanent structures. Judge Yacoob referred to the case of Kotzé v Minister van Landbou en Andere 2003 (1) SA 445 (t) (Kotzé), stating that the preceded judge found that the effect of section 151 of the Constitution provides that "the local sphere of government consists of municipalities which must be established for the territory of the Republic", which meant wall-to-wall municipalities have been created. With such, all land falls within municipal jurisdictions, rendering the Agricultural Land Act ineffective.

Yacoob proceeded by saying that in the constitutional scheme, agriculture is a concurrent national and provincial legislative competence, thus the functional area of agriculture cannot be said to exist in a hermetically sealed compartment. It includes determination of frameworks and policy that would be binding on all provinces and municipalities, as well as legislation concerning implementation made by provinces binding upon municipalities.

After explaining the role of the three spheres of government in national planning, regional planning and municipal planning, Judge Yacoob stated that the retention of the power of the Minister of Agriculture and Land Affairs to approve each and every sale and subdivision of land within an area that is under the control of elected and appropriately structured municipalities that are bound by relevant national and provincial legislation, is inconsistent with the restructuring, decentralisation and democratisation of power that the Constitution requires. The judge further stated that the fear that agricultural land will disappear if the interpretation contended for in this judgement is accepted, is wholly unjustified. Thus, the desire of the Minister of Agriculture and Land Affairs to also have veto powers in respect of the specific subdivision is entirely inappropriate.

2.4.2.2 Case 2: Powers and functions of the provincial government – City of Johannesburg Metropolitan Municipality and Gauteng Development Tribunal. Case CCT 89/09 [2010] ZACC

In 2010, the City of Johannesburg Metropolitan Municipality (the Municipality) took the Gauteng Development Tribunal (the Tribunal) to the Constitutional Court of South Africa, soliciting the verdict on the validity of Chapters V and VI of the Development Facilitation Act (67 of 1995). The municipality needed the constitutionality of Chapters V and VI of the Act tested against the provision of section 156 of the Constitution.

Chapter V and VI of the Development Facilitation Act authorised the Tribunal, established in terms of the Act, to determine applications for the rezoning of land and the establishment of townships. The municipality needed to know which sphere of government is entitled in terms of the Constitution to exercise the powers related to the establishment of townships and the rezoning of land. Section 56 of the Town-Planning and Townships Ordinance, titled 'Application by owner of land for amendment of town-planning scheme (rezoning)', states in Section 56(9) that having considered the application, the authorised local authority (the Municipality) may approve the application subject to any amendment which it may, after consultation with the applicant, deem fit or refuse it; whereas Chapter 96 and 98 of the Town-Planning and Townships Ordinance 15 of 1986, titled 'Procedure to establish township' and 'Decision on application for establishment of township', respectively, state in section 96(1)(a):

> *An owner of land who wishes to establish a township on his land may apply in writing to the authorised local authority [which in this case, the City of Johannesburg, is classified as the authorised local authority] within whose area of jurisdiction the land is situated.*

Section 98(1) states that after the provision of section 96 has been complied with, the authorised local authority shall consider the application and may approve the application, either wholly or refuse it or postpone a decision thereon, either wholly or in part. The Development Facilitation

Act, on the other hand, states in its long title that the Act exists to introduce extraordinary measures to facilitate and speed up the implementation of RDPs and projects in relation to land, to provide for the establishment in the province of development tribunals which have powers to make decisions and resolve conflict in respect of land development projects. Chapter V, section 31, gives instruction (by using 'shall') to the applicant to lodge the development application to the Tribunal. Section 33 states that after receipt of the document referred to in section 31, a tribunal shall consider and may approve or refuse the land development application in whole or in part, or postpone its decision thereon and may, in approving the land development application, impose one or more conditions. Based on the provision of the Town-Planning and Townships Ordinance and the Development Facilitation Act, the conflict was created during the crafting of the intention of the Act that resulted in inconsistencies and interference in municipal powers and functions which propelled the municipality to seek judgement on the matter from the Constitutional Court.

The Supreme Court of Appeal (the Court) held that powers that fall within the functional area of 'municipal planning', are reserved for exercise by municipalities and may not be assigned by an act of parliament to another sphere of government. The Supreme Court of Appeal held that in the context of municipal function, the Constitution uses the word 'planning' to refer to the control and regulation of land use. On that interpretation, the Supreme Court of Appeal concluded that municipal planning includes the power to approve applications for the rezoning of land and the establishment of townships. By authorising tribunals to perform these functions, the Court held that the Development Facilitation Act was inconsistent with the Constitution and declared Chapters V and VI of the Act invalid. Subsequently, the Constitutional Court stated that the order of constitutional invalidity made by the Supreme Court of Appeal, in respect of Chapter V and VI of the Development Facilitation Act (67 of 1995), is confirmed.

2.4.2.3 Case 3: Powers and functions of the national government (Land Use Planning Ordinance, 1985) v the municipality – Maccsand (Pty) Ltd v City of Cape Town 2012 (4) SA 181 (CC)

In 2012, the Constitutional Court had to determine whether the grant of a mining right or a mining permit issued by the Minister of Mineral Resources in terms of section 23 and 27 of the MPRDA entitles the holder to the right or permit to undertake mining operations without obtaining authorisation in terms of the Land Use Planning Ordinance (LUPO) of 1985, which empowers municipalities to determine and enforce the use to which land in their area of jurisdiction may be put. Furthermore, to determine whether such a holder is precluded from commencing or continuing with its mining operations without first obtaining environmental authorisations in terms of the National Environmental Management Act (107 of 1998) in respect of activities listed under section 24(2)(a). The question central to the case was: Does the mining permit issued in terms of section 27 of the MPRDA by the Minister (as a functionary) trumps the need to comply with other

legislation relating to land use and rezoning and whether or not a national act (the MPRDA) can supersede provincial legislation (LUPO) dealing with a distinctly different functional domain?

The Constitutional Court on the Maccsand case further reiterated section 40(1) of the Constitution which states: “In the Republic, government is constituted as national, provincial and local spheres which are distinctive, interdependent and interrelated.” It was said that the division of power within the spheres of government represents change from the hierarchical structure of government that existed under the pre-1994 Constitution in which the national legislature was sovereign and all-powerful, and provincial and local government exercised powers that were allocated to them by the national legislature.

The Court mentioned that mining is part of the national legislative competence and the MPRDA vests its administration in the Minister of Mineral Resources within the national sphere of government. The MPRDA is not concerned with municipal planning, nor does the Minister take account of the municipal land use scheme, policies and plans. This means at the time of her decision, the Minister will not have at her disposal any municipal tools, schemes or policies used for spatial planning, land development or land use management. The MPRDA is concerned only with mining.

The Court indicated that despite MPRDA objections, LUPO continues to operate alongside the MPRDA and are directed at different ends and therefore there is no duplication. For as long as the Constitution reserves the right to administration of municipal planning functions as an exclusive competence of local government, a successful applicant for a mining right or permit will also have to comply with LUPO in the province in which it operates. In principle, the decision also indicates that the fact that a range of authorisations is required in terms of separate statutory instruments (each with its own functional domain and administered by its own functionary) does not necessarily give rise to conflicts among these instruments. The reality that various other authorisations (issued by their respective functionaries within the same or within another sphere of government, in terms of the specific legislation concerned) may be required prior to the utilisation of an authorisation granted by a specific functionary (for example, the Minister, in accordance with the MPRDA), should be dealt with within the context of the constitutional (and concomitant national statutory) framework for cooperative government and intergovernmental relations.

2.4.2.4 Case 4: Powers and function of the provincial government – the minister of Local Government: Environmental Affairs and Development Planning, Western Cape v Lagoon Bay Lifestyle Estate: Case CCT 41/13 [2013] ZACC 39

In 2013, the developer (Lagoon Bay Lifestyle Estate) sought the relief that a decision taken by the Minister for Local Government: Environmental Affairs and Development Planning (Province) be set aside. The minister had refused a land development application (rezoning and subdivision) after the municipality had earlier granted approval. Consideration by Judge Mhlantla observed that the municipality elected to decide on the Lagoon Bay subdivision application and agreed that under LUPO, the provincial minister had no authority to decide on the application as nothing on LUPO suggests that the municipality and the province can decide about the same application. There was no judgement on the constitutional validity of LUPO as the case was on the competence of the Minister to take a decision as provided by LUPO. The Judge mentioned that:

> *In this Court both the Provincial Minister and Lagoon Bay have been partially successful. Lagoon Bay has succeeded in showing that, under LUPO, provincial authorities are not competent to decide subdivision applications. The Provincial Minister has succeeded in defending his competence under LUPO to make rezoning decisions.*
>
> *Judge Mhlantla ordered that the Supreme Court of Appeal is set aside and replaced with the following:*
>
> *(a) The application challenging the decision by the Minister of Local Government, Environmental Affairs and Development Planning in the Western Cape Provincial Government (Provincial Minister), dated 28 April 2011, to refuse the rezoning application of Lagoon Bay Lifestyle Estate (Pty) Ltd (Lagoon bay) is dismissed.*
>
> *(b) It is declared that the decision by the Provincial Minister dated 28 April 2011, refusing Lagoon bay's application for the subdivision of certain properties, is unlawful and is accordingly set aside.*
>
> *(c) It is declared that the George Municipality is the competent authority under the Land Use Planning Ordinance 15 of 1985 to determine Lagoon bay's subdivision application.*
>
> *(d) Lagoon bay's subdivision application is remitted to the George Municipality for reconsideration.*

2.4.2.5 Case 5: Powers and function of the provincial government – the Minister of Local Government: Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others; Minister of Local Government: Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others [2014] ZACC 9

In 2014, a confirmation on the constitutional validity of section 44 of the LUPO was sought as it gives the Western Cape Provincial Government the power to decide appeals against municipal planning decisions. Section 44(b) of LUPO states that a person aggrieved by a decision of a municipal council in terms of sections 14(1), (2), (3), (4) (d) or (5), or section 16(2) (b) or 40(4)

(c), may appeal to the administrator (province as appeals body) in such a manner and within such period as may be prescribed by regulations against such decision. During the High Court proceedings, the provincial minister conceded that section 44 of the Land Use Planning Ordinance is unconstitutional.

The High Court also concluded that the concession was correctly made, finding that the section is manifestly inconsistent with the Constitution to the extent that it not only permits appeals to the province against every decision made by a municipality in terms of LUPO, but also because it allows the provincial minister to replace every decision made with his own decision. The High Court declared section 44 of LUPO unconstitutional and invalid. However, the High Court suspended its declaration of invalidity for 24 months to give the province an opportunity to enact a new regime. In the meantime, the provincial minister may not replace the decision made by the municipality but may set aside the decision, give reasons and invite the municipality to reconsider the application.

Subsequent to the High Court decision, the provincial minister approached the Constitutional Court to confirm the High Court's order in its entirety. The City of Johannesburg Metropolitan Municipality was then admitted as a friend to the court (*amicus cutiae*). The municipality was not using LUPO or the Cape Ordinance; however, they had an interest in the interpretation of the Constitution's division of functional competencies, since the decision or interpretation will apply throughout the country. The municipality also believed that provinces should not be allowed to intervene in functions that the Constitution has reserved for municipalities. The provincial minister presented that there must be some surveillance of provincial legislative and executive powers over municipal planning decisions as large municipal zoning and subdivisions could have extra municipal effect. Judge Cameron, responded to the presentation by the provincial minister, stating that all municipal planning decisions that encompass zoning and subdivision, no matter how big, lie within the competence of the municipality. He then gave the order confirming the Western Cape High Court declaration of section 44 of LUPO invalid.

The above-mentioned cases have shaped the planning system in South Africa. In all five cases the powers and functions of the municipalities were emphasised through the provisions as contained in the Constitution. However, it was also clear that the inability of most officials in the three spheres of government to interpret law and understanding of the provision and spirit in which the Constitution was enacted, places government under tremendous strain. The lack of law reform has shown to have worked against government as old-order legislation existed alongside new-order legislation despite the fact that changes in old-order legislation may in other instances be found invalid when measured against the prevailing Constitution.

It has been clearly indicated that municipal planning is the competency of municipalities. The provincial and national spheres of government have in many instances acted beyond their own competences by taking decisions on municipal matters. It is therefore important for the three spheres of government to understand and respect individual roles and mandates so that government spheres:

- can cease taking each another to court;
- can develop legislation and policies that are constitutionally sound and can be implementable by municipalities without national and provincial spheres holding the hands of municipalities, or dictating to them on spatial planning and land use management matters; and
- can collaborate and coordinate better regarding development planning and implementation of strategies.

There is a general need for government employees, especially legislators and administrators, to be educated in order to understand that laws can demand and represent two different things, and yet be consistent. This was seen in Case 5, that the MPRDA can both be obeyed at the same time when observing SPLUMA requirements and the constitution. Furthermore, the above court judgement becomes a reminder of how government is structured and endures the same constitutional right. No sphere of government has superiority to the other; hence section 41(e) explicitly states that all spheres of government and all organs of state within each sphere must respect the constitutional status, institutions, powers and functions of government in the other sphere. The court case also indicated that there was not only an urgent need for law reform whereby legislation that is inconsistent with the Constitution should be repealed, but there also was a need for harmonisation of legislation, and where authorisation processes were possible, such processes should be allowed to avoid deficiencies in development.

Time and money have been spent on court cases instead of providing services to local communities and strengthening the growth and development of the country. This is a pure indication that this sphere of government has not matured to comprehend the principles of cooperative government. This is evident through the silo mentality employed when administering legislation of a particular government department, that says ‘my legislation says, the rest doesn’t matter’, regardless of section 41(1)(h)(iii), (iv) and (vi) of the Constitution that read:

> *All spheres of government and all organs of state within each sphere must cooperate with one another in mutual trust and in good faith by— informing one another of, and consulting one another on, matters of common interest; coordinating their actions and legislation with one another; and avoiding legal proceedings against one another.*

2.5 CONCLUSION

Oranje (1995:22) wrote “in the absence of the changes to the apartheid system, transformation of the planning system remained nothing more than a topic of academic discourse”. However, from 1996 the planning system has been gradually transforming. Currently the planning system shows a degree of progression whereby the colonial planning and apartheid planning is being altered by the democratic planning system as introduced by the constitution of the Republic. The municipalities through policies and strategies are creating solid systems that influence their developmental mandate. This transformation has seen government spheres working towards the integrated planning, improved budgeting and reporting model. Coetzee (2012:18) acknowledged planning transformation successes that have taken place over past decades, however noting the need to build capacity and skills development of planners and improving alignment and integration of plans and policies; harnessing and simplifying the vast plethora of plans to limit duplication and confusion. Echoing the later statement, this chapter did indicate that a comprehensive legislation assessment has not being undertaken hence number of applicable pieces of legislations have not been harmonised.

This chapter recognised that municipal planning is a contested function that had to be resolved through court’s adjudication processes. To date, numerous judgements have indicated that municipal planning is the competency reserved exclusively for local government. Those cases have become an important source of law improving the understanding and interpretation of legislation better. Furthermore, these cases have improved the intergovernmental relation between the three spheres of government encouraging them to work together, allowing the national and provincial sphere of government to provide a supporting and monitoring role without undermining the power’s and function of municipalities in executing their developmental duties as provided for in the Constitution read with Municipal Systems Act and Spatial Planning and Land Use Management Act.

In order to complete the understanding intricacies of the planning system, four countries are chosen to investigate and understand their planning system. Therefore, the subsequent chapter provide for a different perspective in the planning systems adopted by other countries. This experience is needed to strengthen the body of knowledge relevant to this study.

CHAPTER 3: INTERNATIONAL LITERATURE ON THE PLANNING SYSTEM

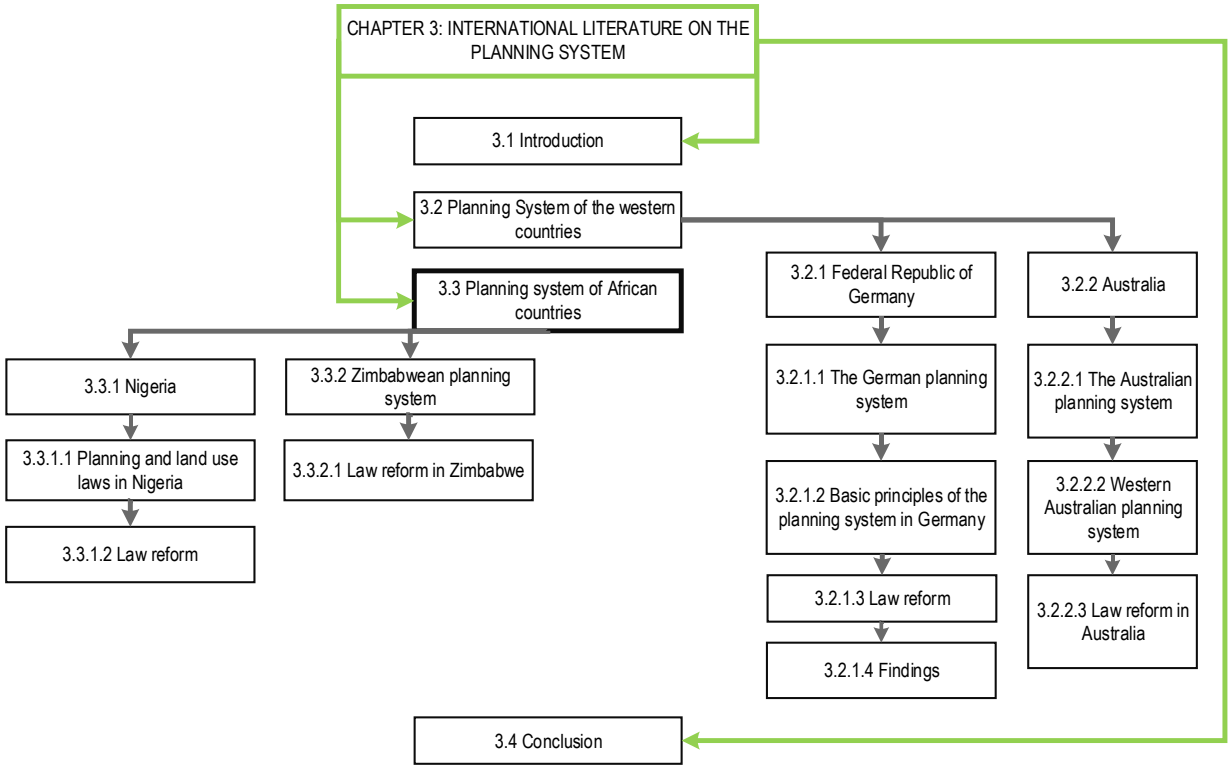


Figure 3.1: Structure of Chapter 3

Source: Own construction (2019)

3.1 INTRODUCTION

Most African countries such as Ghana, Nigeria and Zimbabwe were influenced by colonial planning ideologies. Looking at the layout plans of African cities, they are similar to western cities such as the Garden City theory introduced by Ebenezer Howard in the 1900s. Interestingly, in contemporary African urban-areas/cities legacies of colonialism especially its negative effects in Africa should be waning instead persisting and on the rise. Ideally, the planning system is (was) aimed at controlling the development of settlements, land use management and the construction of building in the colonies (African Planning Association, 2013:1).

Generally, the planning system in the world largely has a common objective of regulating and managing the use of land. However, the regulation of land uses in African countries was done with a sinister motive- in South Africa for instance it was placing and housing indigenous people

working in the mines with accommodation that was not fit for human habitation and created segregation and other inhumane acts.

Against this background this chapter intends to discuss the core principles of colonial era planning system and post-colonialism in the following African states: Nigeria, Zimbabwe and South Africa. In an effort to draw in similarity and contrast of colonial African countries cities to western countries cities – Germany and Australia planning system discourses and perspectives are discussed in cognisant that planning has evolved over year.

3.2 PLANNING SYSTEM OF THE WESTERN COUNTRIES

This section is a review of Germany and Australian planning system respectively mainly focusing on constitutional and legislative issues, law reform and service delivery amongst others. The aim is to gain a reference point to the global practice insofar as planning law and law reform. Germany is a liberal democratic country with federal systems of government. Phal-Weber and Henckel (2008:11-20) state that Germany functions under their 1949 Constitution, known as the Basic Law.

3.2.1 Federal Republic of Germany

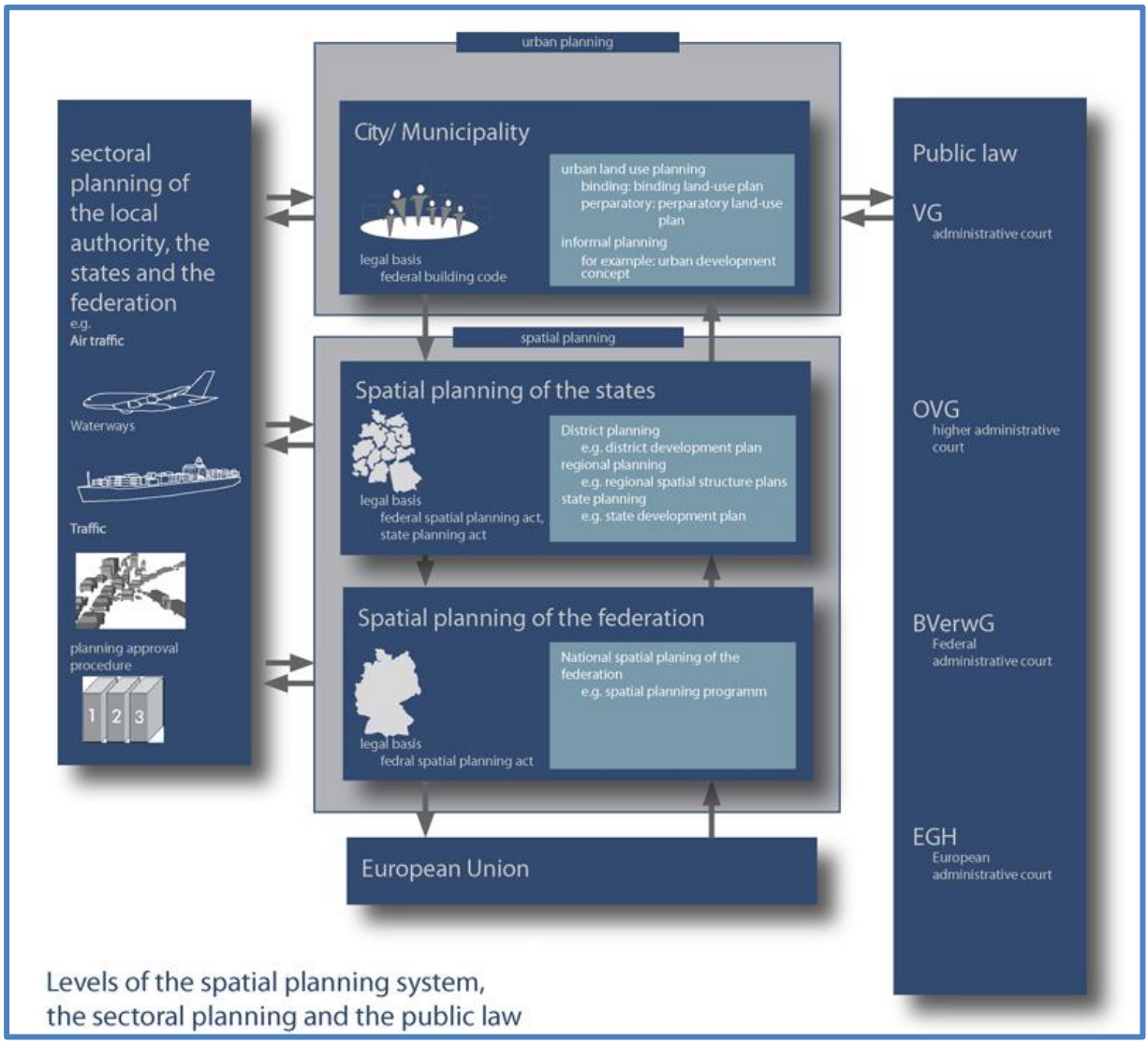


Figure 3.2: Planning system in Germany

Source:http://commin.org/en/planning-systems/national-planning-systems/germany/2.-legislation-and-jurisdiction-in-the-planning-system/ (2019)

3.2.1.1 The German planning system

The federal structural principles of the Federal Republic of Germany are federalism, composed of a central government and Länder; democracy, where the authority is people-oriented; the rule of law; and the social state. These four structural principles are core components of the Basic Law and cannot be changed by legislation.

Schmidt and Buehler (2007:57) cited Alterman (2001:12-13) and Newman and Thornely (1996:4&5), stating that the planning processes and decision-making structures are

decentralised. The planning is more integrated between levels of government, something which is lacking in the South African planning system. Public participation in the German planning system is somewhat similar to the above-mentioned South African planning system. The planning system is guided by the Constitution as the basic law and public authorities are bound by the principle of the rule of law. In Germany, federal law supersedes land law, which is different from South Africa as no legislation can supersede the other, only the Constitution that is supreme to any other law.

Germany is made up of the federal government, 16 Länder, 114 regions and approximately 14 000 municipalities. Municipalities in Germany are secondary to the national state. Municipalities have an equal level of autonomy but not equal in terms of their significance in the system. Their significance is measured by the size, population, economic level and political influence (Pitrova, 2008:59). This planning process consists of well-structured and impactful public participation.

3.2.1.2 Basic principles of the planning system in Germany

The federal government sets the overall framework and policy structure to ensure basic consistency for state, regional and local planning. It does not create or implement plans (Newman & Thornely, 1996:4). Federal building codes thus require municipalities to make plans that are vertically and horizontally consistent with each other.

The land use management and spatial planning in Germany is governed by a different legislation. Land use planning takes place at local level and is laid down by the Building Code, whereas spatial planning in Germany cuts across the three spheres of government and is governed by the Federal Spatial Planning Act as well as other respective state planning acts.

Interestingly, in Germany there is informal planning that is not regulated by law. Local councils are mandated to prepare and adopt informal plans in a form of master plans. These master plans deal with informality and can be binding only administratively.

3.2.1.3 Law reform

Germany experienced some law reform over the years, for example:

- The nineteenth century dealt with the Building Line Code and Building Line Act in 1855 and 1875, respectively.
- The twentieth century saw the adoption of the Federal Spatial Planning Act, 1965; amended in 1998.

- In 2004, the scope of the Federal Spatial Planning Act of 1998, was extended to cover the German Exclusive Economic Zone, which largely dealt with marine spatial planning and the protection of the marine environment.

3.2.1.4 Findings

The German planning system contains similarities and differences to the South African planning system which are summarised as follows:

Similarities:

- The planning system in Germany is governed and guided by the Basic Law, while in South Africa, the Constitution is supreme providing for the role and responsibility on planning matters that cut across the three spheres of government and municipal planning as the sole mandate for local government.
- Informalities were not part of the planning system prior to SPLUMA. The SPLUMA advocates that the land use scheme must be inclusive of informalities so that every land use is regulated correctly, whereas Germany has a master plan to deal with informalities but not yet included in any law dealing with spatial planning or land use management. In this case, both countries have a mechanism to deal with informalities.
- Until the advent of SPLUMA, spatial planning and land use management were regulated by different pieces of legislation. It is only with SPLUMA that spatial planning, land use management and land development are provided under one piece of legislation. In Germany, there are different pieces of legislation dealing with spatial planning and land use management.
- In both countries, land use management takes place at the local government level.
- In both countries, the consistency in legislation prevailing in different spheres of government is emphasised.
- Spatial planning and land use management in both countries are centred on people as part of democracy.

Differences:

- In Germany, spheres of government are not equal, whereas in South Africa spheres of government are equal though distinct, but interrelated in their functions, roles and responsibilities.
- Germany has recognised the state and federal government as superior to municipalities and as such the associated laws prevail. The South African Constitution provides for instances where national law can prevail over provincial law. In the same breath, provincial legislation can prevail over national legislation in terms of section 146 of the Constitution.

3.2.2 Australia

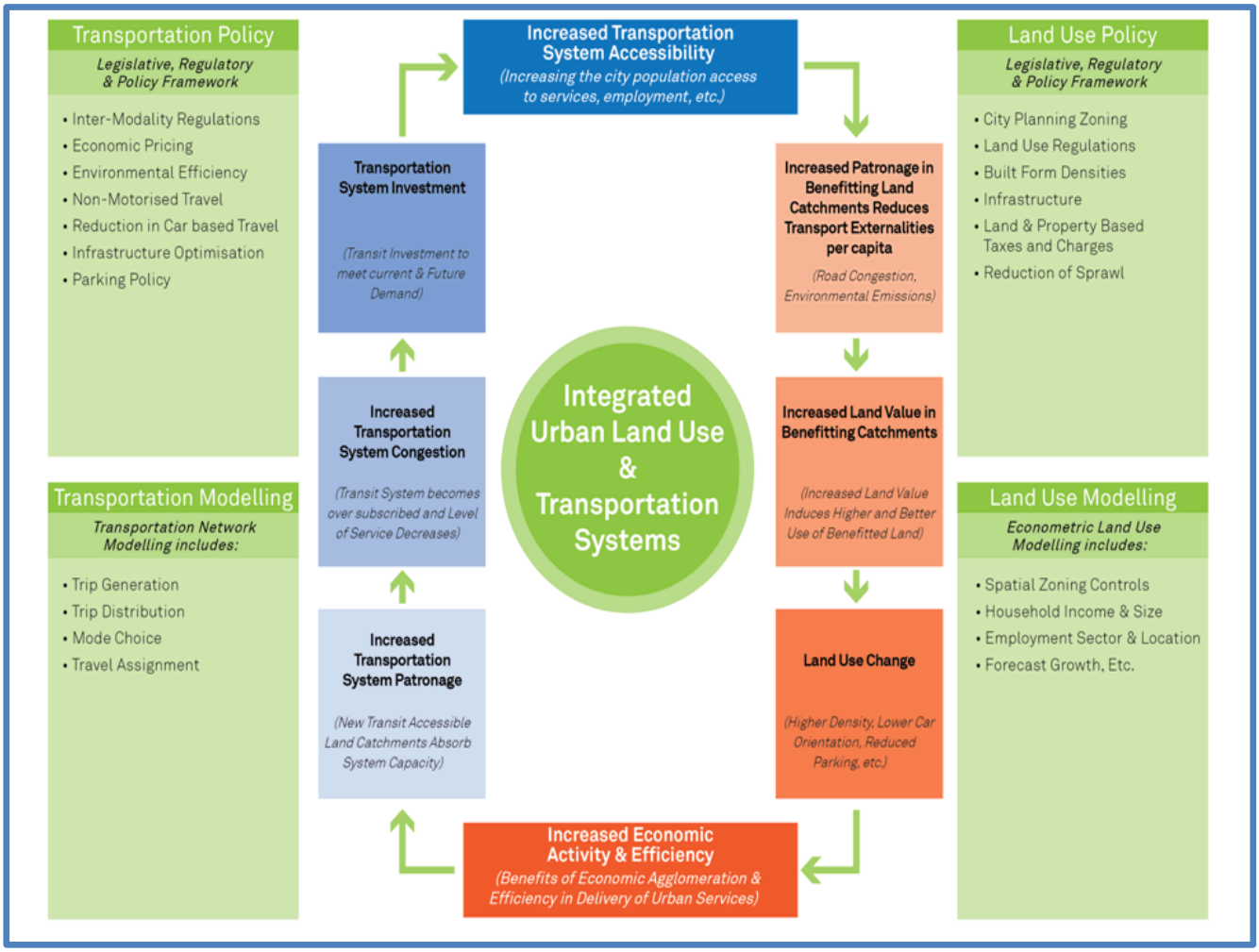


Figure 3.3: Australian Integrated planning system

Source: Luticonsulting.com.au/services/integrated-land-use-transport-planning (2019)

3.2.2.1 The Australian planning system

According to the overview of the Western Australian Planning System done by the Department of Planning (2014:1), the planning system is based on a unique combination of institutional arrangements that provide for strong and simple legislation; centralised statutory regional planning, subdivision control and facilitation of local planning; funding for metropolitan improvement; and a statutory authority to exercise powers, allocate resources and provide advice based on expert professional support of a state government department. The planning system in Australia is divided into the following states:

- Western Australian planning system.
- South Australian planning system.
- Queensland planning system.

- New South Wales planning system.
- Victorian planning system.
- Tasmanian planning system.

For the purposes of this research, only the Western Australian planning system will be discussed.

3.2.2.2 Western Australian planning system

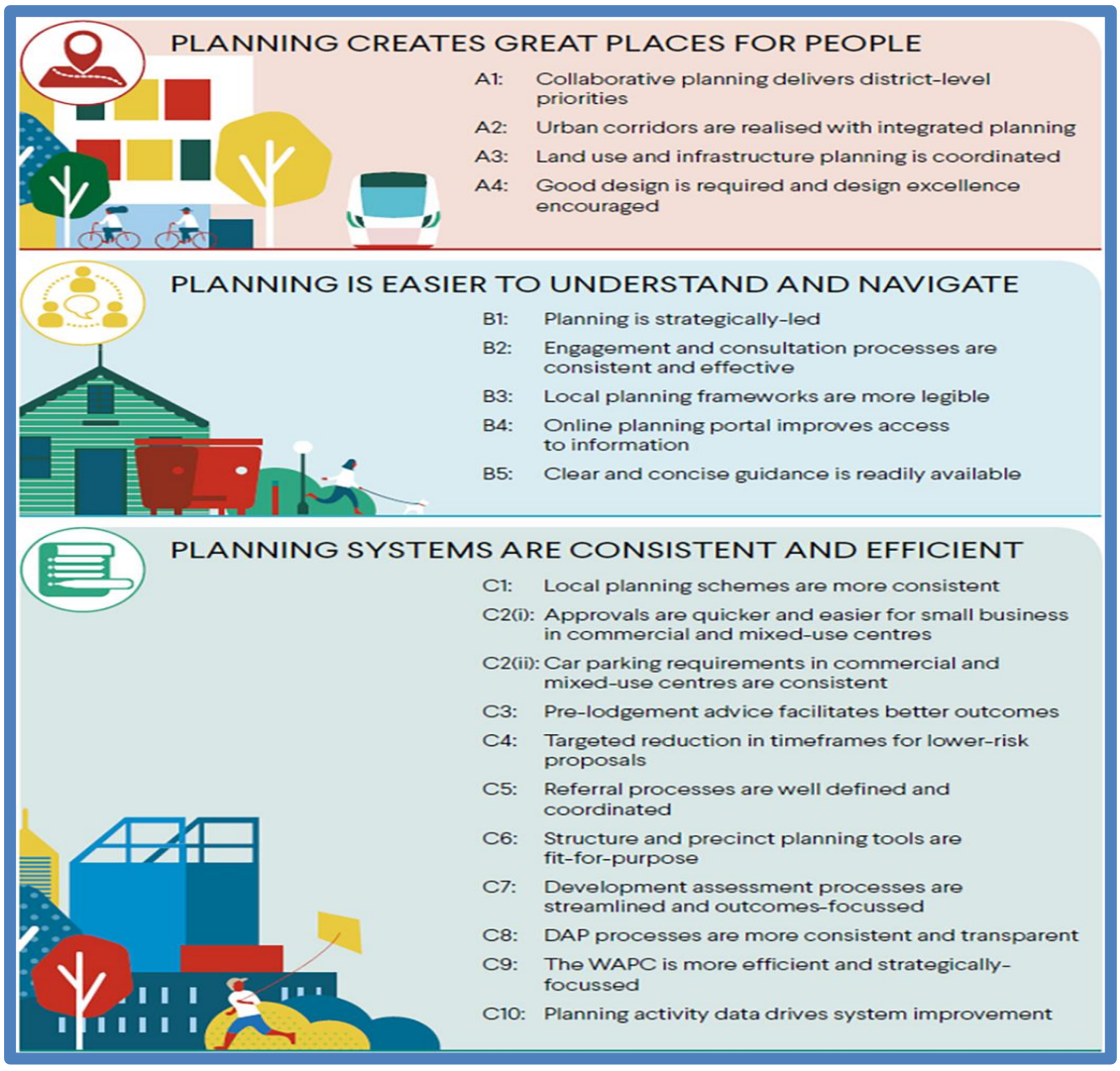


Figure 3.4: Summary of planning system

Source: Hon Rita Saffioti MLA (2019)

Basic principles of the planning system

The planning system in Western Australia, according to the Introduction to the Western Australian Planning System (2014:1&5), is governed by simple legislation, centralised statutory regional planning, subdivision control and supervision of local planning. Williams and Williams (2014: 496) mentions that the Australia governments want their state and capital cities to be attractive places

for national and international investment, economic activity, employment generation, and development. Therefore, they have embarked on reform by removing unnecessary regulatory red tape and delay.

Troy (2004:12) indicates that the planning system must reflect range of interest and concerns of the community. Thus, planning systems must be reformed in order to provide for simplified land development approvals and prioritisation of major projects as priority areas. Thompson and Maginn (2012:143-414) concede that the planning system is posed with challenges associated with climate change, slow growth pace in the economy, change in demographics and the ever-shifting role of government. Toon and Falk (2003) added by saying that planning from the early years focused on efficiency and quality of life. It is no surprise that there is a strong Federal Department of Urban and Regional Development that was established to deal with the planning system as a whole in Australia. Over and above, they have a Planning Institute of Australia that plays a significant role in legislation pertaining to urban planning.

Over 600 local planning jurisdictions exist in Australia, with many permutations of policies. State, territorial governments and local government implement planning policies that ideally reflect local inspirations (Matthew, 2010:1). There is a growing need for a coordinated role from government to provide a framework to deal with policies that bring conflict from different states. In order to make sense of the Australian planning system, it becomes imperative to briefly establish an understanding on how legislation has evolved over the years in Western Australia.

3.2.2.3 Law reform in Australia

There has been some form of reform in Western Australia; the change started with the Municipal Institutions Act of 1895. This Act dealt with public health, housing control and land use control. In 1928, the Town Planning and Development Act was introduced to give power to local authorities to prepare a district town planning scheme (zoning town planning scheme). Another amendment was introduced in 1959, giving birth to the Metropolitan Region Town Planning Scheme Act. This Act gave power for the development of the regional scheme, covering the metropolitan areas. In 2005, the Town Planning and Development Act of 1928, the Metropolitan Town Planning Scheme Act of 1959 and the Western Australian Planning Commission Act of 1985 were consolidated to form one piece of legislation called the Planning and Development Act of 2005. This Act provides for a comprehensive system of land use planning and development (Government of Western Australia, 2014:9 &10). The law reform, however, did not end in legislation regulating the planning system, but it also expanded to decision-making bodies that are the tribunal and appeals authorities.

The Western Australian Planning Commission developed the Western Australian Planning Commission Act in 1985. This Act gave the commission power to develop state planning policies.

In 2004, the State Administrative Tribunal of Western Australia was established under the State Administrative Tribunal Act of 2004. Jurisdiction was conferred under multiple legislation, including the Town Planning and Development Act of 1928, the Metropolitan Region Town Planning Scheme Act of 1959, the Western Australian Planning Commission Act of 1985, the Local Government Act of 1960, the Local Government Act of 1995, the Land Administration Act of 1997 and the Heritage of Western Australia Act of 1990 (Barker, 2009:1& 2).

In 1976, the Town Planning Act was amended by the Town Planning and Development Amendment Act, replacing the court with the Town Planning Appeals Tribunal. During that time, a parallel mechanism existed to deal with appeals through the ministerial system by the Town Planning Act of 1983, which confirmed the right to the applicant under the Town Planning Scheme to appeal to the minister and by extension to the Town Planning Appeals Tribunal. In 2002, the Planning Appeals Amendment Act amended the Town Planning Act, making the Town Planning Appeals Tribunal the sole review tribunal in Western Australia (Barker 2009:5).

Table 3.1: Summary of the law reform

Act	**Objective**
Municipal Institutions Act of 1895	Deals with public health, housing control and land use control
Town Planning and Development Act of 1928	To give power to local authorities to prepare a district town planning scheme (zoning town planning scheme)
Metropolitan Region Town Planning Scheme Act of 1959	To give power for the development of the regional scheme
Town Planning and Development Amendment Act of 1976 6(amended the Town Planning Act of)	To replace the court with the Town Planning Appeals Tribunal
Town Planning Act of 1983	To give effect to appeal to the minister
Western Australian Planning Commission Act of 1985	To give the commission power to develop state policies
Planning Appeals Amendment Act, 2002	To enable the Planning Appeals Tribunal to be the sole review tribunal in Western Australia
State Administrative Tribunal Act of 2004	To enable the establishment of Tribunal of Western Australia
Planning and Development Act of 2005 (combination of Town Planning and Development Act of 1928, Metropolitan Region Town Planning Scheme Act of 1959 and Western Australian Planning Commission Act of 1985)	To provide comprehensive system of land use planning and development

Source: Own construction (2019) adopted from Government of Western Australia (2014)

The planning system is strategic in nature, embracing legal status and intentions/objectives, and that they are kept simple, flexible, and under constant review. However, it is not too clear how the planning system devolve all decision-making to the lowest level consistent with the capacity and competence to take those decisions.

3.3 PLANNING SYSTEM FOR AFRICAN COUNTRIES

Vanessa (2011:20) reiterates this chapter's introduction that most African countries inherited their planning law from their former colonial powers. She further adds that many of these countries have since revised their planning law, but the attitudes and practices of politicians and planning professionals towards urban development still reflect the approaches enshrined in the older colonial laws. With the knowledge that the urban-areas/cities are continuously changing and planning laws amended and reformed – this section aims to draw and reflect on these changes in Africa for successful municipal planning and what not adopting non-western countries planning system would mean to African countries.



Figure 3.5: Maps indicating location of the two African countries under discussion.

Source: nationsonline.org Heinrich Boll Stuftug (2018)

3.3.1 Nigeria

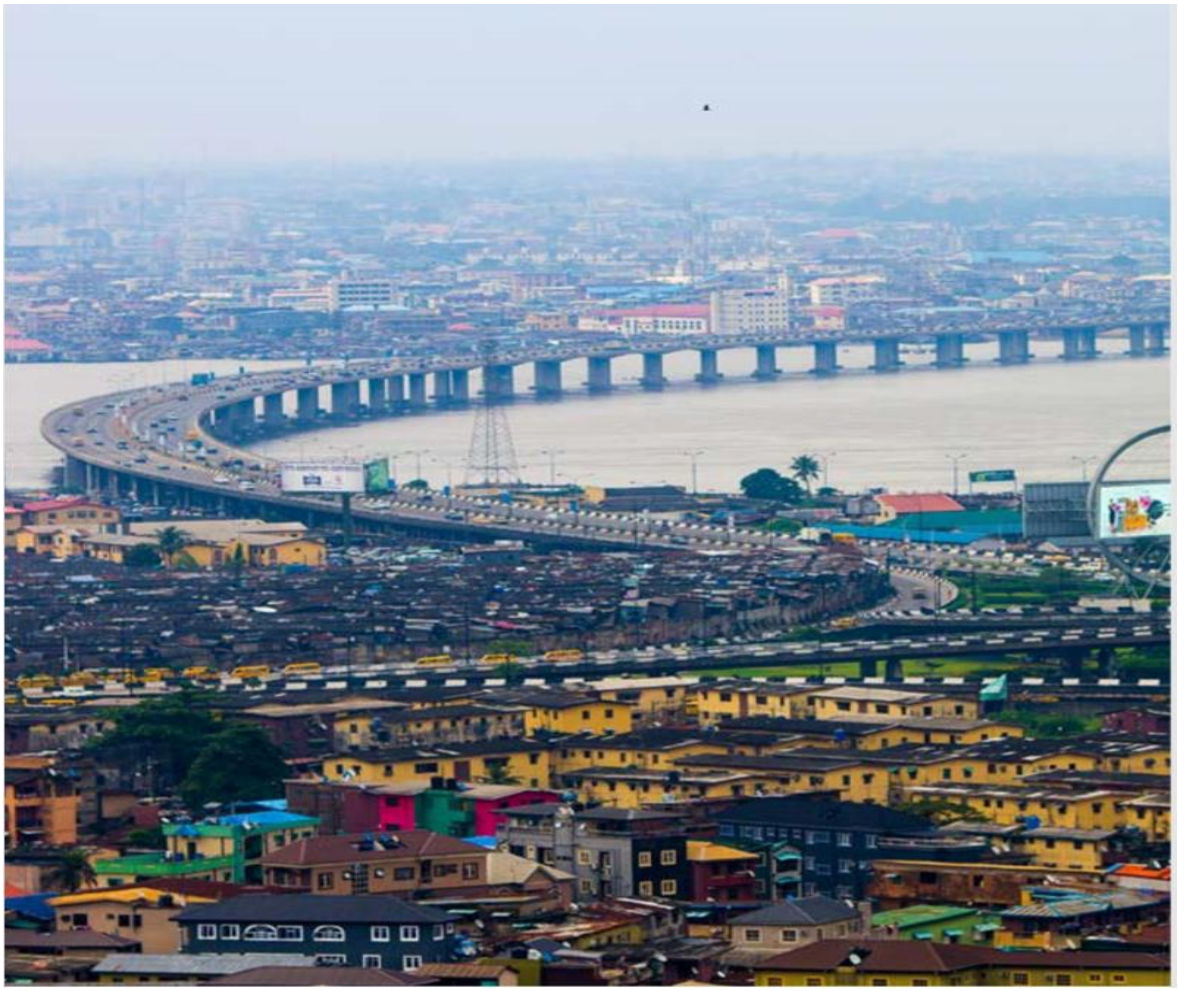


Figure 3.6: Nigeria Planning system
Source: Heinrich Boll Stiftung (2019)

3.3.1.1 The planning and land use laws in Nigeria

The use of land in Nigeria is centred on socio-economic, cultural, political and environmental attribution. Thus, development of policies, regulation and law becomes essential in managing and controlling the spatial form of the cities, towns and villages. This is done by using structural elements such as transportation, roads, industries, businesses, residential, agricultural and other infrastructural assets. According to Agbola and Olatubara (2003), as cited by Ilesanmi (2012:191), infrastructure is critical to social and economic development, thus a catalyst for attracting investment. Hence, infrastructure development is based on good governance to enhance the living standards of the country at large.

Olaore (1991) cited by (Akinmoladun & Oduwaye, 2008:208) states that planning laws specify what land may be used for. In Nigeria, the Land Use Decree (No 6 of 1978) vested all land within

the state to the governor and all land is to be held in trust and administered for the use and common benefit of all Nigerians (Akinmoladun & Oduwaye, 2008:208).

Musdapher (2014:5) gives a history of Nigeria, stating that the legal system is interwoven with that of the colonial British administration. Before the advent of colonialism, there was a dominant Islamic legal system in Nigeria, especially in the northern part. In agreement with this are both Kayonde and Bayo (2012:26), who mentioned that the Nigerian traditional settlement development patterns gave way to the colonial approach with the annexation of Lagos as a British Colony under the Treaty of Cession in 1861, and the consequent promulgation in Lagos in 1863 of the Town Improvement Ordinance to control development and urban sanitation. Over the years, the planning system has changed, starting with the enactment of the Township Ordinance in 1917. It was a landmark in the evolution of town and country planning, which later influenced the guidelines for the physical layout of towns.

In 1946, the colonial government enacted the Nigeria Town and Country Planning Ordinance 1946 to provide for the planning, improvement and development of different parts of the country through schemes initiated by the planning authorities. The Ordinance is said to have been based on the 1932 British Town and Country Planning Act (Musdapher, 2014:5.)

Just like in South Africa, there is state and national legislation that has a bearing on municipal planning. These include:

- Mineral Act (1945).
- Public Health Law (1957).
- Building Line Regulation (1948).
- The Lagos State Transport Corporation (Cap 104 of 1997).
- The Lagos Parking Authority (Cap 95 of 1980).
- The Lagos State Urban Renewal Board (Cap 106 of 1991).
- The Lagos State Waste Management Authority (Cap 107 of 1991).

As part of law reform, a Local Government Reform Act (1976) was enacted which made town and country planning a local government affair. State governments established local authorities to control development and initiate planning schemes. As part of law reform, the Town Planning and Country Planning Law (1946) was seen to be ineffective to meet the present planning requirements. Thus, a recommendation was made to review the law and promulgate laws that are applicable nation-wide to cater for different needs of the community. Subsequently, the Nigerian Urban and Regional Planning Law (1992) was promulgated. The Nigerian Urban and Regional Planning Law, together with the Lagos State Urban and Regional Planning Board, Edict

No. 2 (1998), made provision for planning at all government levels (Akinmoladun & Oduwaye, 2008:209).

3.3.1.2 Law reform

Nigeria, after independence, owes its current planning system to the colonial regime that surpassed the Islamic legal system that was more dominant in other parts of Nigeria. What is interesting is that land is vested to government and held in trust. There are a number of pieces of legislation that regulated the planning system. Law reform was seen an exercise deemed important in coordinating and harmonising relevant multiple pieces of legislation in order to meet societal needs. Furthermore, it will ensure that there are social, spatial and economic growth, and development much needed for Nigeria to remain globally relevant and competitive.

The transition from the colonial era to independence necessitated law reform in Nigeria. Musdapher (2014:3) indicates the need for law reform in the country as most laws fall short in addressing societal needs. He argues that a concerted effort of the executive, legislature, judiciary professionals and civil society is vital to ensure a holistic reform in both laws and institutions. Furthermore, Musdapher (2014:23) believes that solving today's problems can create a better state tomorrow; hence, the laws, when reformed, must reflect the aspiration in the values of the citizens.

Muhammad (2016:217) mentions that law reform in a legal system is necessary "to improve the laws by making changes or corrections so that the laws will be in harmony with the constant demands of the time being and desired democratic norms". He furthermore states that law reform mechanisms are needed to cater for technological advancement, seeing that "technology is key to development and progress".

This is true when one looks at the manner in which people want to be provided with services in a fair and dignified manner, which will empower them socially and economically. Laws are seen as tools to ensure fairness in the distribution of wealth and services, guiding how space is used to benefit all habitants. This requires removing old and obsolete laws and eliminating loopholes and ambiguity so that service delivery, growth and development become a reality.

3.3.2 The Zimbabwean planning system

Munzwa and Wellington (2010:120-121) mention that the history of urban development in Zimbabwe is directly related to colonialism, because previously the settlement patterns represented what is known as sprawling, and there was no formal system to control or manage the use of land. Zimbabwe was not spared from exploitation by the white settlers, introducing administrative laws and procedures on how land should be used and by whom, and setting rules

on when a particular space can be utilised. Structuring elements such as railway lines and urban centres became key in designing settlement patterns (Wekwete, 1992; Zinyama *et al.*, 1993) as mentioned by Chirisa, I. (2010:58). Echoing these sentiments is Chenga (1986:42-43), who stated that the colonial styles of building were dominant, as is still demonstrated in most rural building practices in Zimbabwe with an estimated increase of 45 000 per year for the next decade.

The UN-Habitat (2002 and 2012) concurs that planning systems and laws in many colonised countries were designed to support spatial segregation and population control, resulting in extreme income inequalities and uneven development. Appropriate planning laws and practices are required to harness the opportunities of economic growth and dealing with informalities. New legislation has been developed over the years; most importantly, the Town Planning and Country Planning Act, (1996), with one of its objectives to provide for the control over development, including the use of land and buildings, and providing for the planning of regions, districts and local areas (Chigara *et al.*, 2013:143).

The planning in Zimbabwe, through the integrated approach as cited by the European Commission (2012), seeks to redress the economic and spatial injustices that created a high number of unemployment, economic uncertainties, urban sprawl, and environmental degradation. Such will create cities that are socially progressive and creating strong engines of economic growth.

3.3.2.1 Law reform in Zimbabwe

Rakodi (1994:1556) explains that planning legislation in Zimbabwe has a history dating back from health regulations and by-laws in 1881. The Town Planning Act of 1933 was based on the 1932 British legislation, which was the vehicle for the introduction of the town planning scheme. Such schemes existed until 1976, which later became the Town Planning and Country Planning Act (1945), which introduced a more improved way of controlling development. More reforms of the Town Planning and Country Planning Act took place in 1947, 1959, 1968, 1969, 1976, 1985, 1993 and 1998. This was necessary to transform the land scape of the country and to ensure planning legislation become relevant to deal with settlement patterns and socio-economic challenges as created by sprawling and environmental degradation.

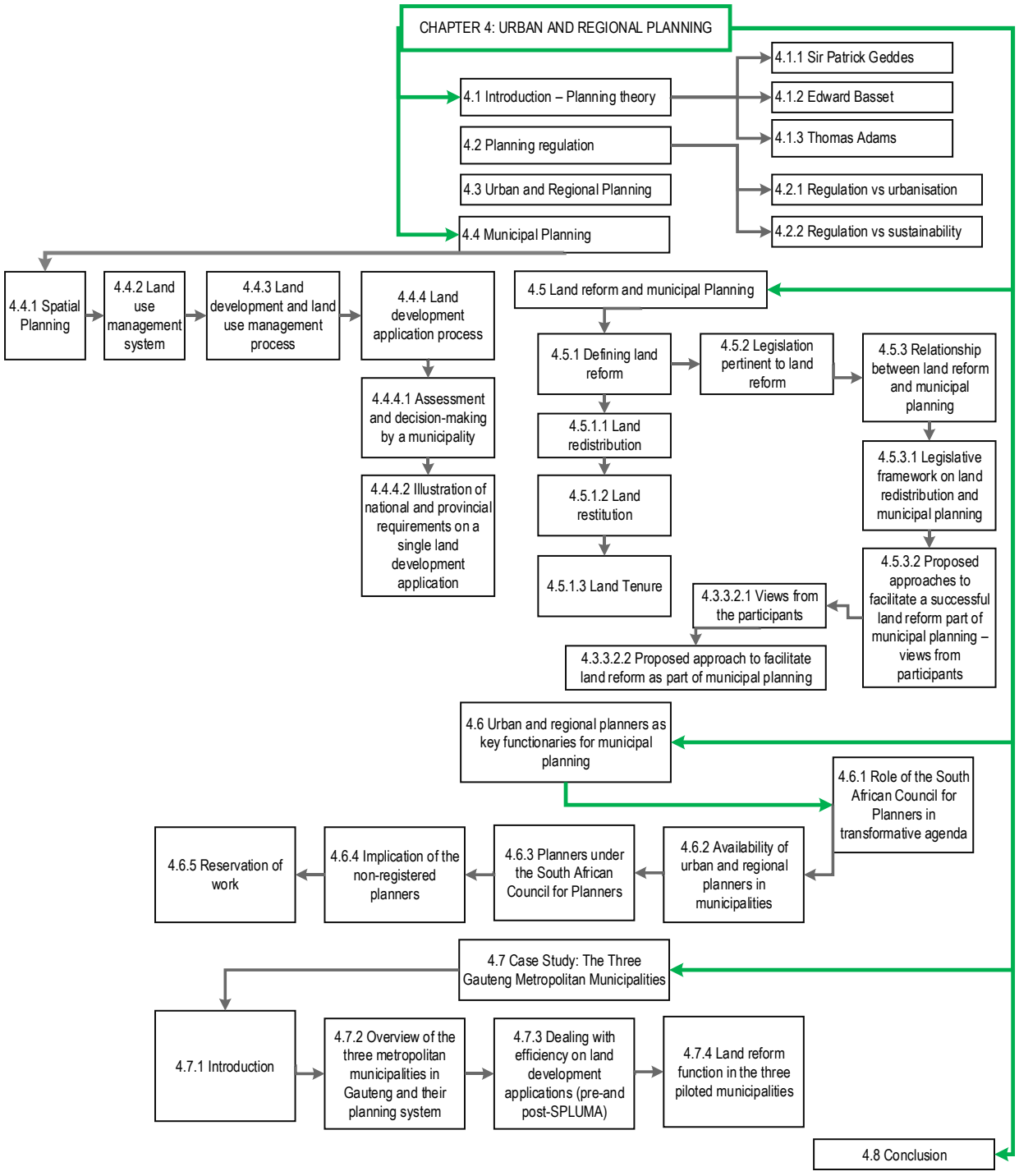
3.4 CONCLUSION

Legislation intended to deal with every social and economic societal need requires continual review. The reformation in Western Australia indicates a state within a country that is maturing in all developmental sectors. Coordinated alignment in the planning processes is key in any country

where growth and development are concerned. Such processes provide certainties and boost investor confidence, especially when approval processes are simplified and synchronised by avoiding unnecessary delays and confusion.

With these lessons from international countries, the study can now zoom into the actual planning system employed in South Africa, with special emphasis to the three metropolitan municipalities located in the Gauteng Province. The next chapter thus deals with spatial planning, land development and land use management. The processes and procedures that will be discussed are the three metropolitan municipalities found in Gauteng, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni.

CHAPTER 4: URBAN AND REGIONAL PLANNING



Source: Own construction (2019)

Figure 4.1: Structure of Chapter 4

4.1 INTRODUCTION – PLANNING THEORY

This Chapter discusses the theorist that shaped urban and regional planning over the years. These planning theories explore the spatial characteristics of urban areas formation and expansion. The urban planning theories and processes based on the distribution of land uses from different perspectives (Bagaeen, 2019:12). According to Wray et al. (2013:15) planning theories knowledge and understanding is entrenched in planning model – for instance testing spatial location theories and describing interactions between various land uses, actors, and related activities in urban settings. Models stimulate urban development (Hersperger, 2018:32). Bagaeen (2019:15) adds that they reflect the location and level of spatial accumulation. Simply put, where a city, an urban area, or human settlement physically begins and ends.

The characteristics of these models – structure, principles, demographics (people, households, jobs, relationship between land use and transport are linked to the urban policy (OECD, 2017:56), plan/strategy/programme in urban areas. This illustrates that these theories/models can extend, not only the knowledge of land use/transportation connection but provide an extended dimension – multitude law embedded functions that concern the rules and rights. In essence, they provide a framework how a particular solution to planning problem might be given a solution through the law (Booth, 2016:11). This alludes that the role of spatial planning in land-use change is defined by governance (Hersperger, 2018:27) which is a function of law – in this case covering planning law with an expected outcome of functional urban forms and/or municipalities.

Surely this has a potential for expanding the capacity of spatial planning and later municipal planning. This is in line with this Chapter's aim to determine reciprocal relationship between urban and regional planning and planning law. The impact of law in shaping the way in which spatial planning is conducted is often overlooked and attitudes to law are often overlooked and attitudes to law are often purely instrumental. In the subsequent sections of this chapter evolution of planning theories and law is established and its effect on spatial planning equally important planning administration and municipal planning.

4.1.1 Sir Patrick Geddes

Patrick Geddes also known as "Father of Modern Town Planning" is the first to link sociological concepts into town planning. As put by Thomson (2017:3) Geddes model is the fundamental unity and interdependence of culture and nature – the embedded in transdisciplinary education and locally adapted direct action as a means of cultural transformation. As illustrated in Figure 2.2 below Geddes unearthed the interface and/or relationship that connote role of the architects/designers/planner:

- to contribute to the material adaptation of people and their livelihood to the specific opportunities and challenges of the places they inhabit, and,
- to affect in the transformation of culture through education.

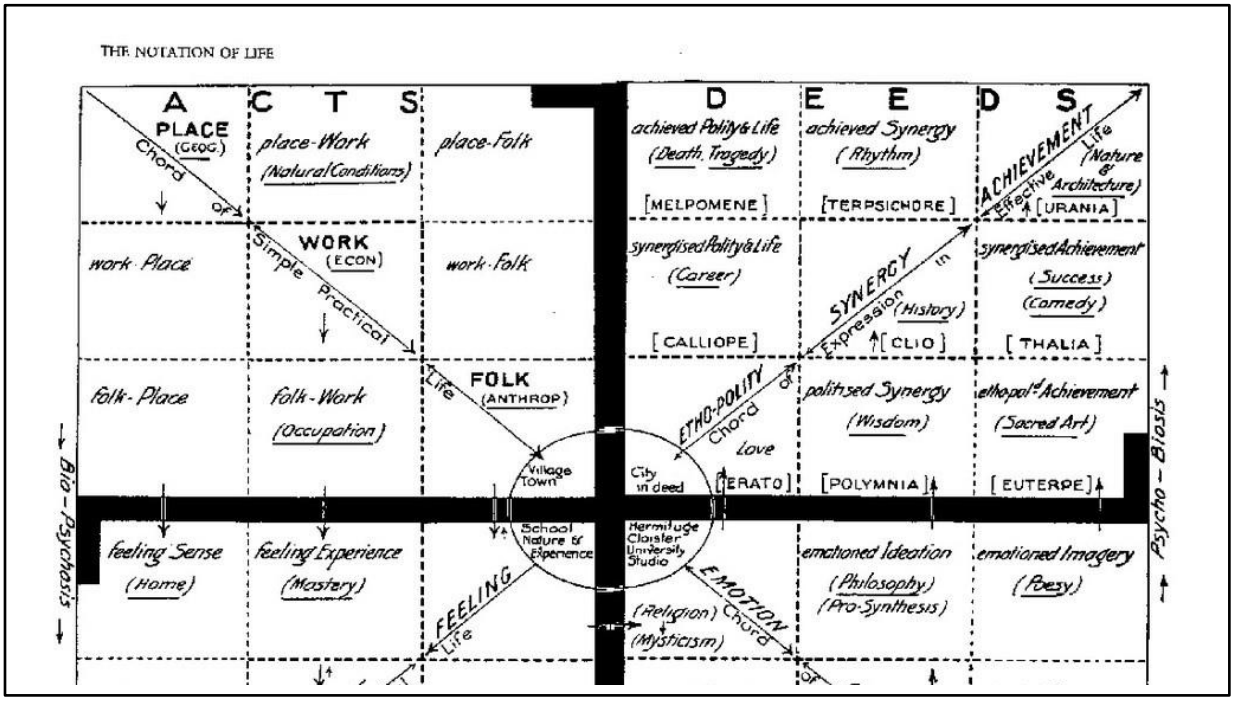


Figure 4.2: Sir Patrick Geddes model – design and planning for people in place

Source: Hysler-Rubin (2011:14)

The core principles of Geddes work are:

- Conurbation – the term introduced by him – an aggregation of continuous network of urban communities;
- Relationships of people and cities, thus the city-region term;
- Using the rational planning method of survey analysis – according to Palma (2016:98-118) the sequence should be:
    - ✓ Small neighbourhood
    - ✓ towns
    - ✓ Metropolis

This must look at various scale of thinking and approach looking at difference between rural development, town planning, Regional planning and urban design.

Purchase (2003:24-32) introduced ideal of Peter Kropotkin, explaining the concept of regionalism and incorporating it in his work Russian anarchist Peter Kropotkin (1842–1921), understood it to propose a greater regional independence, self-governance based on decentralized and self-determined network of communities.

Moreover, Geddes rediscovery of the city and/or systematic thinking that cities are in constant evolution is viewed as an outstanding contribution to sociology. In an effort to understand sociological perspective in planning – the concept is briefly discussed and one of its major theoretical perspective is functionalism.

Theory Overview

Functionalism interprets each part of society in terms of how it contributes to the stability of the whole society. Society is more than the sum of its parts; rather, each part of society is functional for the stability of the whole.

In summary the theories core principles are norms and values as outlined below:

Norms this refers to the normal, typical or expected patterns of behaviour associated with societies or specific contexts or social roles.

Values this refers to the major and lasting ideas and beliefs about what is desirable and undesirable. Important sources of values include religion, politics, and one's family background

This fundamental principle of the sociology as outlined above – Geddes sociological adaption as means of societal transformation and transdisciplinary knowledge are claimed to set up the parameters of planning law in this study. In support of this claim is Geddes theory as foundation and enabler for the British Housing and Town Planning Act of 1909 and later an invitation to put his ideas to work in India. There, between 1914 and 1924, he surveyed and planned some fifty cities (Pepler, 1955:19).

In line with this postulation made, Wardron (2016:1) points out that law is a system of rules that are created and enforced through social or governmental institutions to regulate behaviour (ensure that a community show respect, and equality amongst themselves). Social institutions and social organizations are regulated by the state and government. This political science element brings in another dimension that solidifies the relevance of this theory in this study. This concedes with Schoeman (2015:168) call for the appreciation of nature planning as a political process. According to Morris Ginsberg" Historically, Sociology has its main roots in politics and philosophy of history". Therefore, the logical consistency ushered by sociological perspective in urban and regional planning appears to be an important principle of law. The recitation premises regarding the relationship between planning and law has been theoretically stated in.

In general, Garau (2016:2) indicates that the Geddesian theory principles are kept up to-date and are of profound contemporary significance. In summary, the key Geddesian impulses that still deserve further attention in the contemporary context of sustainable development are: the bioregional planning approach that integrates ecological, socio-cultural and economic considerations at a regional scale; the emphasis on transdisciplinary education as a prerequisite

for informed civic participation and cultural change; and a holistic methodology for decision making and design that considers the contributions of diverse fields of human knowledge (Garau, 2016:7-9).

4.1.2 Edward Basset

Developing tools for planning – Edward Bassett authored 1916 New York City zoning code published by the National Municipal League in 1922 (Palma, 2016:110). Bassett a planner and lawyer was the first to use zoning as way of implementing land use in New York as illustrated below in Figure 2.4 below.

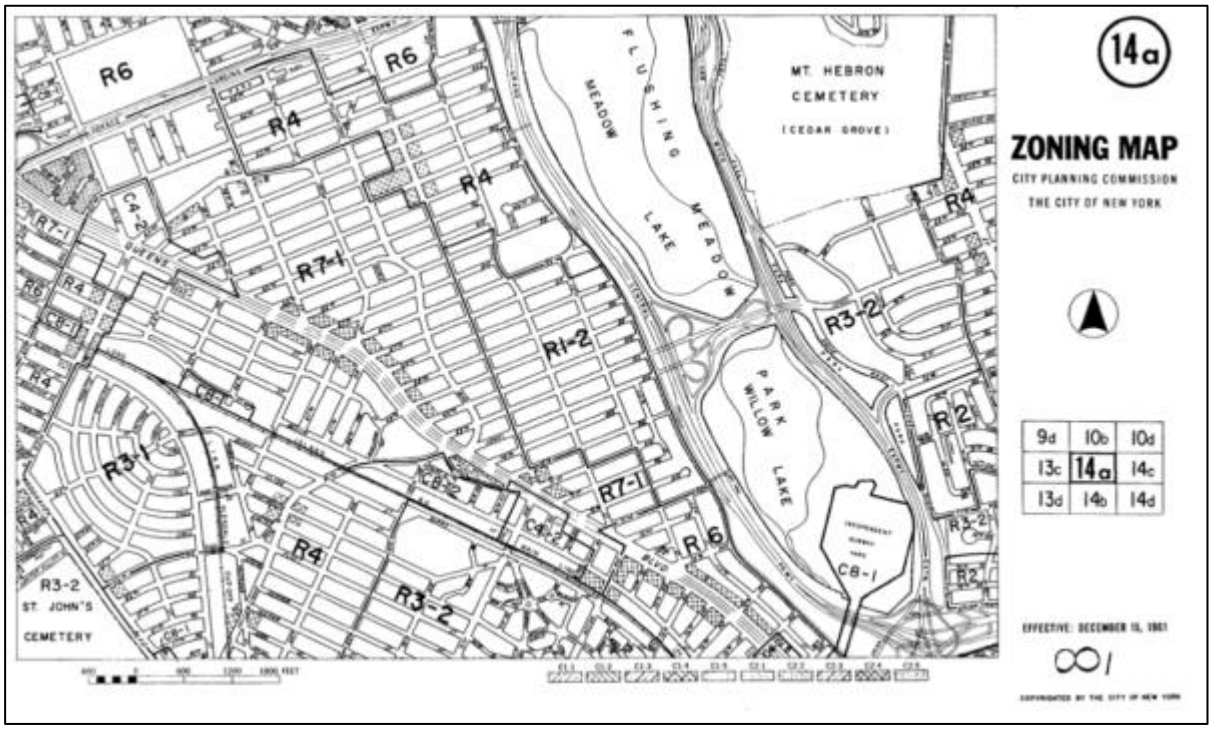


Figure 4.3: Zoning diagram for neighbourhood in Queens from 1916.
Source (NYC Department of City Planning, 2019:1).

Edward Murray Bassett refered to as the “Father of American Zoning” – in his own words 1931:

“Zoning looks to the future and is not so much intended to cure past errors as to prevent future invasions by improper buildings and uses. Zoning seeks to protect and stabilize what is good and prevent what is bad. It seeks to make localities more attractive for their proper uses. It is based on the assumption that what is more attractive is more valuable.”

In 1922, precisely sixty codes were established in American cities, and Bassett made a compelling case for many more states to allow this new practice (Nairn, 2019:1). Table 2.1 captures and makes reflection on the principal arguments Bassett made in favour of zoning – according to Nairn (2019:1) many of which still apply today.

Table 4.1: Bassett's zoning principles and assumptions

Primary arguments	**Assumptions/Scenarios**	**Implications**
1. Cooperation yields overall larger return on investment for all property owners	*Primary concern – underscored with a number of scenarios: - In some of the larger cities a landowner in the business district is almost compelled to put up a skyscraper because if he put up a low building, his next neighbour would put up a higher one that would take advantage of his light and air. - Skyscrapers were probably not a sound investment in their own right, but they were built anyway in a virtual arms race for public goods of light, air, privacy, and scenery.	Zoning was the truce that made everyone better off.
2. Zoning stabilizes building and property values	*Signalling to investors what they can expect from a certain district. *Markets work when people know what they are buying, and zoning creates some assurance that the product will not change fundamentally.	This reason is why housing developers were among the most ardent supporters of zoning in the early stages.
3. Constitutional limits on local police powers would prevent zoning excesses	Residents need not worry about a slippery slope toward regulating aesthetics and sentimentality	Assigning of certain duties and responsibilities; powers and functions
4. Zoning is better than deed-restrictions which were already being used to accomplish a similar purpose.	Zoning is applied comprehensively and can be adjusted by elected bodies to meet evolving needs unlike deed-restrictions	Comprehensive land use management
5. Zoning is better than nuisance law	Without a zoning code in place, disputes between property owners about impacts can only be settled through common law nuisance claims	This is more expensive and arbitrary than zoning
6. Zoning prevents the wealthy from leaving the city	*Cities to zone for the kinds of low-density neighbourhoods the wealthy were seeking, in order to prevent them from moving further out and losing the tax base: - This is reminiscent of a contemporary argument that cities must provide free downtown parking, in order to prevent shoppers from taking their business to the suburban big boxes	Attempt to hinder the trend toward suburbanization
7. Zoning limits land speculation	*Eliminating the possibility for large-scale buildings in low-density zones: - owners of vacant corner lots, that had been held out of use so that apartment houses might be built, have in almost every case improved them as high-class one-family residences	There would seem to be counterexamples that go the opposite direction
8. Zoning maximizes public infrastructure investment	*Major thoroughfares create natural businesses districts by giving access to numerous customers: - however, if homes or other less suitable uses are built on major streets, the full economic impact of the public infrastructure is not achieved	*This would also facilitate reasonable planning of public infrastructure and facilities: - high density transport infrastructure and highly

		connected networks commonly encourage economic growth
9. Zoning manages and stabilizes growth	*Zoning encourages growth while at the same time it prevents too rapid changes: - a good code would lead to steady growth, without any expanding or deflating real estate bubbles	This would also facilitate reasonable planning of public infrastructure and facilities

Source: Nairn (2017:1)

On these principles and assumption planning land use tool emerged. This clearly justify adoption of these principles and assumptions of Bassett in this study as it endeavours to establish core theories, concepts and principles that illustrate the interface between law and urban and regional. The study contends that this relationship is critical foundation for municipal planning. The planners and officials across America, who first established zoning codes endeavoured to regulate the hitherto unregulated land markets to provide some order to real estate development (Barr, 2019:1). Moreover, it was designed to keep factories away from homes; to limit congestion and overcrowding; and to promote open space, light, and air in the residential neighbourhoods (Barr, 2019:1).

More emphasis in line with the objective of this study – zoning code also called zoning ordinance definition is drawn in. It is a written local (municipal) regulation and law that defines and specifies how property in specific geographic zones and can further be used to deal with special districts (rni,1993:105 and 246). After Bassett wrote the first comprehensive zoning ordinance for New York as is the case today elsewhere in the world where zoning code is used – the understanding deduced is that structure plans were (are) adopted in terms of planning law a method of development management that explains and designates municipal planning in the form of land uses.

Today, framework for sustainable development serves as a basis for which to undertake urban and regional planning – zoning is the primary form of environmental regulation. Of importance here to note is that zoning has evolved becoming increasingly complex – in support of this statement NYC Department of City Planning (2019:2) compares 1916 zoning diagram as shown above and 2019 as set out in Figure below.

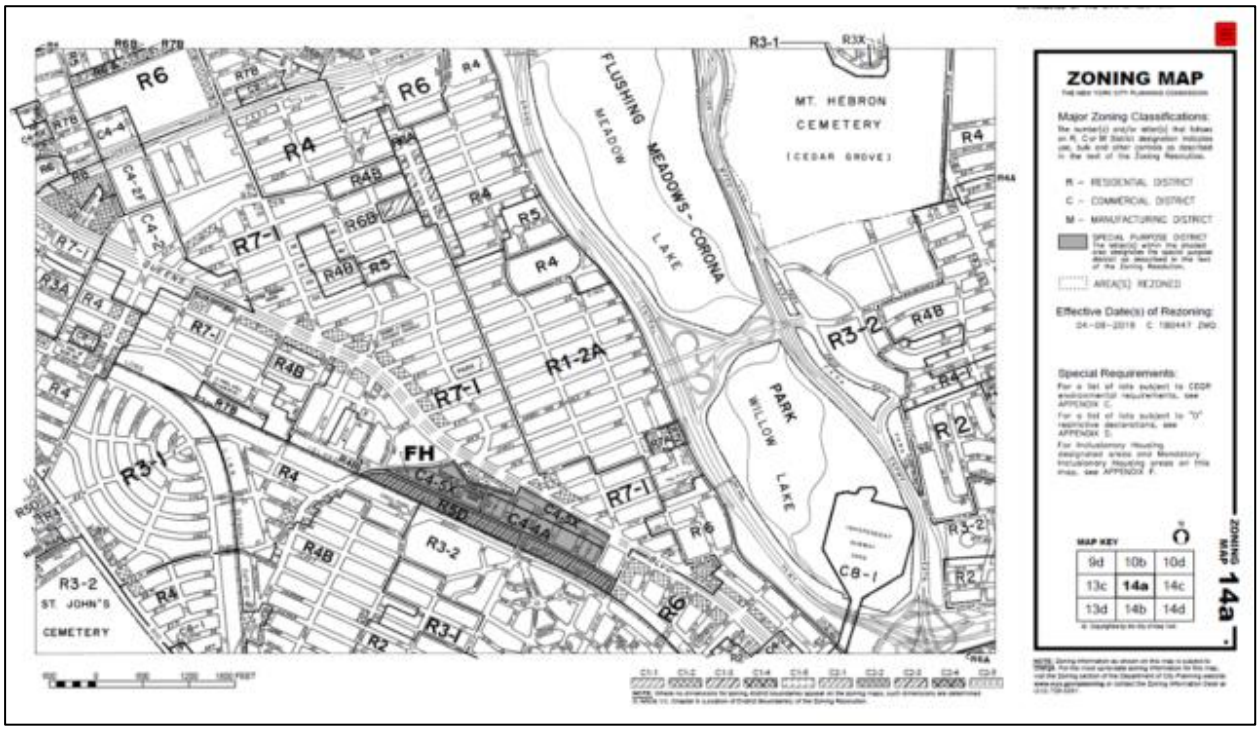


Figure 4.8: Zoning diagram for neighbourhood in Queens from 2019.
Source (NYC Department of City Planning, 2019:2).

The opponents of zoning view its increasing complexity and being proscribed especially in aspects which would normally be covered by the development controls. This land use tool is being critiqued to encourage Not *In My Back Yard* (NIMBY) – as put by Barr (2019:2) it has become NIMBY lobbyists weapon of choice. According to Fischel (1987:22) homeowners could make sure that the zoning maps became increasingly stringent. Resultantly, any changes to the maps or individual lot designations must be preceded by hearings and allow the community to voice their anger or fears of harm that these changes will make (Fischel, 1987:23). Simply put, zoning has become source of power of individual property owners to use – conversely it furnishes them with law and regulations to stop development around their lots (Barr, 2019:3). Though in some instances it appears that zoning has turned out as a tool to frustrate and stalling cities developments originally it started as a tool for creating order and this is still its function in municipalities today.

4.1.3 Thomas Adams

Thomas Adams is a British planner who contributed immensely in urban and regional planning knowledge and practical impact on planning in Canada. While in Canada Adams identified a gap existing in Canadian planning and invented a body of planning theory “Rural Planning and Development (1917)” that was Canada’s first planning text (Chadwick, 2002:20-21). Furthermore, Adam brings principles that deals with:

- linking the urban centre to rural areas,
- controlling the use of natural resources,
- preventing land speculation, and
- meeting social needs.

In his endeavour to refine the process of planning to yield better plans – his work and/or contribution as summarised by Chadwick (2002:21) include:

- involvement with the Garden City movement;
- in 1914 appointed as town planning advisor to Canada's Commission of Conservation (as per a request from the prime minister to the British government) – in Canada his contribution included:
    - promotion and passage of planning legislation;
    - promotion of provincial departments of municipal affairs in a number of provinces;
    - provisions of advice on the preparation of general plans;
    - establishment of town planning commissions throughout the country; and
    - the generation of support for public planning.

Although Adams was writing over hundred years ago totally for different age, his work perfectly fits in the modern world issues – the world needs to emulate it to address a host of issues now. Being a proponent of regional planning his understanding that still stands relevant is that though planning core is focus on land use issues, planners also concern themselves with the local economy, labour and employment, demographics, resource management, and environmental protection. Chadwick (2011: XVII) offers a graphical summary and reflection of this Adams work as set out in Figure 2.6 below.

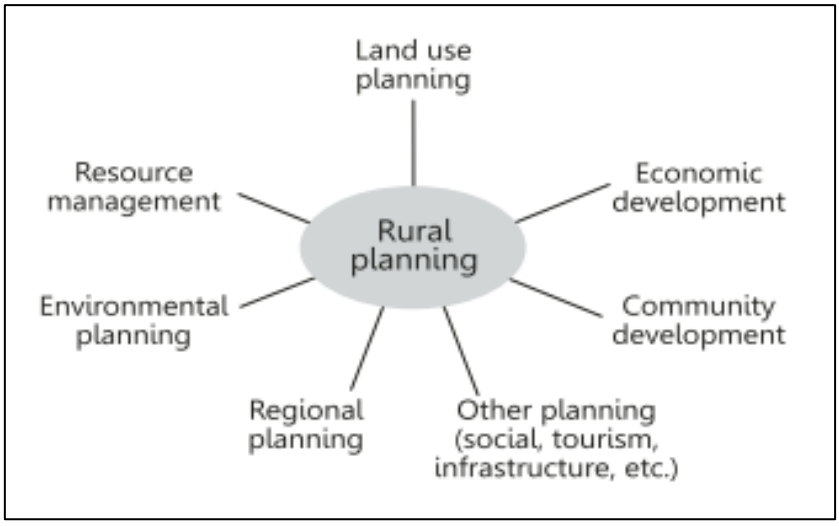


Figure 4.5: Components of rural planning.

Source: Chadwick (2011:XVII)

Therefore, drawing in rural planning definition in order to understand these views and/or body of theory – various literature reflections (Olivier, *et al.,* 2010:1; Chadwick, 2002:17) is that it is the process of planning for rural areas, with a focus on rural issues and from a rural perspective (implying an appreciation for the rural community, its needs and aspirations). Realisation of urban and rural linkages have to adapt to and maximise on parallel processes, relying on community initiatives as much as on legislated processes in the implementation of their initiatives (Olivier, *et al.,* 2010:2-6). Interestingly, the issue of law in urban and regional planning is amplified in Adams theory as well. As put by Palma (2016:115) Adams pushed for planning legislation by mandate, local plans, zoning, building regulations, and recognised the responsibility of a licenced or professional planner.

4.2 PLANNING REGULATION

The planning theories have provided a framework for creation of planning laws. At the municipal level, spatial (urban) planning overlaps with transportation planning, environmental planning and urban management (Schoeman, 2015:172; Moroke, 2016:140-158). Urban systems are understood to be complex open systems – therefore it becomes also complex planning for such systems and often must include a long-term vision (Batty, 2009:31). Though planning provides a systematic way of viewing problems and developing short- and long-term solutions.

A highly illustrated in the interplay of planning theories and planning law is an accurate picture of how the legal processes are carried out emerged. Its purveyance analytical platform of important legal issues to be taken into account when designing new municipal legislation covering urban and rural planning and services delivery issues.

4.2.1 Regulation vs urbanisation

There is an extensive literature on the urbanization process looking at both urbanization and urban concentration; urbanization and economic growth; and urbanisation and shift out of agriculture, and government policies. The relationship between urbanization and urban planning concepts such as economic growth and policy making is deemed perplexing. Much of the literature on the urbanization process and the pronouncements of policymakers have both hailed growing urbanization as a sign of progress (Chang & Brada, 2006:24; Njoh, 2012;167). On the contrary, the essence of this interface appears to be diverse and more complex.

According to Berrisford (2013:1) as competition for land intensifies in Africa's rapidly growing towns and cities, planning laws assume a fundamental importance. He further argues that they determine how urban growth is managed and directed. Conversely, these tools in majority of countries are out-fashioned, incongruous, disintegrated and unsustainable laws that in turn exacerbating urban dysfunction.

Using regulation tool for better municipal/urban management is frequently advocated as a necessary step for better management of urbanization (Salet & de Vries, 2017:189). But regulation tools consistently founder given the approaches adopted of "one-size-fits-all" and "model" planning laws from outside the continent has not served Africa well. (Berrisford 2013:1). Against this background, the challenge remains how planning tools can respond to urbanization in local regulation context manner. The planning theories have rendered legal contextualisation researchable and the following operational avenues of analysis are recommended (Salet & de Vries, 2017:189) to cement planning theories and planning law relationship:

- the normative dimension (requiring quality of legal norms);
- the relational dimension (studying the alignment of norms in different positions, such as:
    - the legislation,
    - the court, and
    - social compliance;
- the temporal dimension (searching the alignment of different moments of legal validation); and
- the functional dimension (making transparent the different roles that government agencies may take).

A statutory backing is needed to prepare any legal plan so that it can be implemented on ground. It is governed by principles, statutes, and codes which is derived from the state.

4.2.2 Regulation vs sustainability

Geddes pioneered planning approach that embraced the concept of biological evolution that could be applied to explain the evolution of society – based on social and ecological responsibility and literacy (Wahl, 2017:7). Sustainable development principles are entrenched in the ecological foundation. Defined – sustainable development is a development which meets the needs of the present without compromising the ability of future generations to meet their own needs and aspirations (WCED, 1987).

It is vividly clear that sustainable development concept is derived and/or has its roots in the thoughts of Geddes, in his attempt to integrate nature and culture through sustainable practices at all scales. In the contemporary context this requires integration of ecological, social, cultural, economic and psychological concerns (Wahl, 2017:8). Wahl further adds that within the context of the globalized world of the 21st century the transdisciplinary and integrated solutions for sustainability are continually pushing the boundaries through disciplines such as ecological economics, industrial ecology, bioregional planning, urban ecology, integral ecology, ecological engineering and the various design approaches that aim to meet human needs while integrating human activity into the limits posed by the biosphere. In addition to this there are the following concepts: design for sustainability, deep design, green design, eco-design, cradle-to-cradle design, and ecological design (Birkeland & Walker, 2006:1-236; Esbjörn-Hargens, 2005:5-40). Deduced here is an interdisciplinary approach toward solving the issue of planning modern.

This shift according to Birkeland and Walker (2006:80) will require comprehensive strategy. And with the context of urban and regional planning – they argue that bioregionalism planning purveyance that and define it:

“Bioregionalism is land-use planning that integrates industry, agriculture, economics and governance together with the ecology of the region. It begins from the premise that humans evolved in response to their environments and are subject to natural laws and limits; therefore, communities should be designed to fit their bioregion. However, bioregional planning could also be designed to assist in the transition to a bio-based economy.”

Premised in full participation of civil society in continuous evolutionary process – bioregional planning approach contends that society will able to reinvent itself through strong integration with ecological sustainability, with land-use planning, and with transport management (Wahl, 2017:12).

This interdisciplinary approach can also be useful in the governance of municipal planning. In abstract terms, municipalities/urban areas/cities are considered sustainable and functional based on their ability to regulate almost all variables of their existence and function (Garau, 2016:10). This includes:

- urban responsibility in being able to attract people, businesses, and supportive communities to the city;
- ability to implement concrete actions to ensure a new balance between rural areas, urban areas, and
- areas that can be urbanised, but also between the landscape and infrastructure.

Impressively, Garau (2016:10) make a note that all these above can possibly be achieved through an elaborate regulatory system.

4.3 URBAN AND REGIONAL PLANNING APPROACH

There is comparatively an active role that theorists played in spatial planning and land use management. Based on theorists' components of urban and regional planning were established. Discussions under municipal planning bring together the legal, administration and technical aspects relevant to the orderly and resilient built environment. Urban and regional planning is concerned with people, places and the environment. It uses practice, techniques and process approach as guided by the statute's application. Kulshrestha (2012:4) building from the theorists (Birkeland & Walker, 2006:1-236; Esbjörn-Hargens, 2005:5-40)., states that urban and regional planning is a multidisciplinary subject and requires inputs from various disciplines.

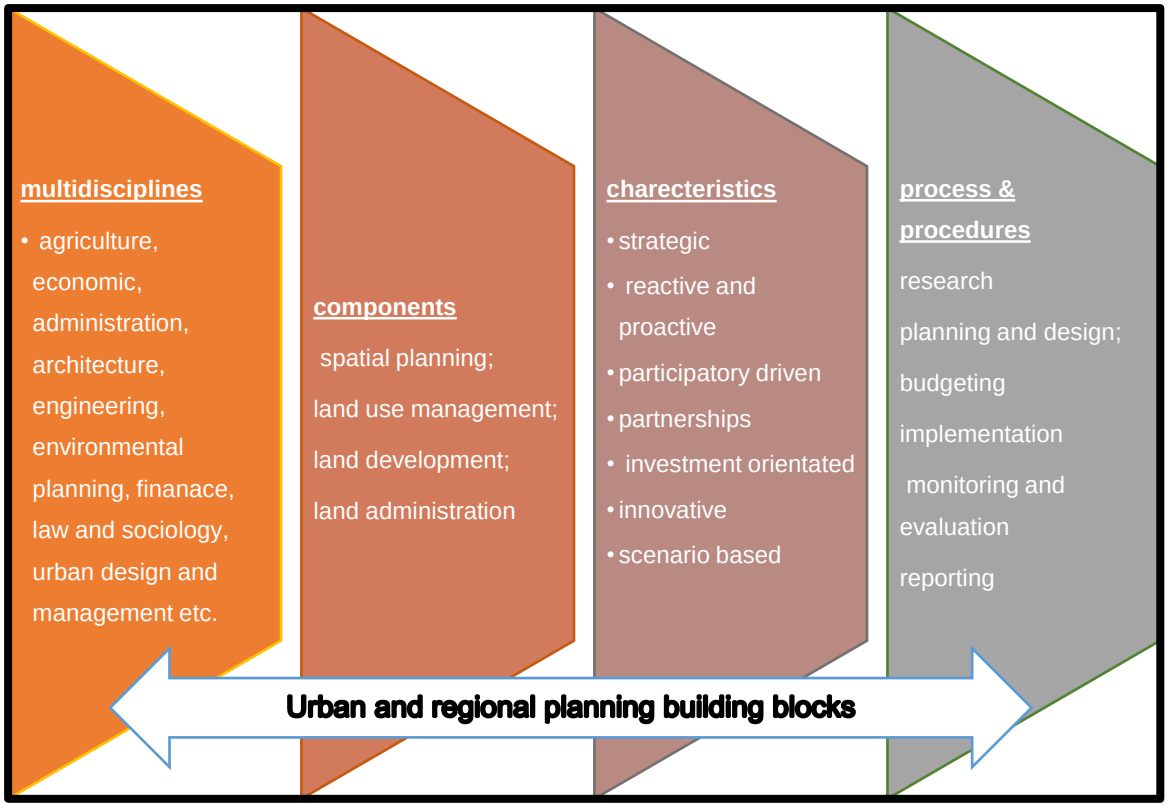


Figure 4.6: Urban and Regional Planning Model

Source: own construction (2019)

The private sector and the three spheres of government depend on urban and regional planning fundamentals to achieve developmental and transformation ambitions of the country. In the public sector urban and regional planning becomes a process that operates within a structured environment. For the purpose of this study, municipal planning is seen as the function that has

intelligence to pull together and connects multiple attributes into tangible results that can be measurable and tested. Urban and Regional planning balances different competing needs, thus the effective balancing act relies on statutes application. Despite the shortcomings that have been identified under chapter 2, statutes regardless of their multiplication and uncertainties play a central role in municipal planning and service delivery role.

The SPLUMA, in its preamble, captures the plight of municipal planning, saying that various laws governing land use give rise to uncertainty about the status of municipal spatial planning and the land use management system and procedures. The frustration negatively impacts on the achievements of cooperative government and the promotion of public interest. This means the success of municipal planning lies on the shoulders of the three spheres of government working together, respecting each other's powers and functions as provided for in the Constitution.

There is no doubt that planning is South Africa is progressive, but slow. To date, there are still people whose lives are influenced by racial inequalities, spatial imbalances, social and economic exclusions. Furthermore, laws applicable to spatial planning and land use management are still not synchronised and the processes used, though being amended to cater for the government transformative agenda, are still creating undesirable delays making it difficult to bring much-needed growth and development to uplift people's lives. Coetzee (2012:10) mentions that the South African municipal planning system is still struggling to adapt to and implement new principles, in spite of various efforts and policy developments.

The ramifications of apartheid planning have proved to be difficult and complex to eradicate. The scars are too deeply entrenched, resulting in government departments repeatedly producing a number of apparatus in order to reverse the legacy of apartheid. However, such apparatus seems not to be yielding strikes due to a lack of coordination, consistency and progression. This lack of coordination is often caused by the neglect of the role and responsibility that each sphere of government plays in municipal planning processes as provided for by the Constitution.

The Gauteng Province is used as a pilot to demonstrate how planning as a system has evolved over the years and also to highlight the consequences of using pre- and post-1994 legislation, processes and procedures without any synchronisation. In this chapter, the researcher highlights the relationship between law, planning principles and planning procedures in order to realise a coherent and systematic projected growth and development. Below is the reflection on municipal planning as the exclusive function of municipalities and the relationship between the spatial planning of the three spheres of government. This include discussion on land use management system utilised as part urban and regional planning. Land reform cannot be excluded in this study as urban and regional planning deals with rectification of the imbalances of the past and restores dignity municipal planning process.

4.4 MUNICIPAL PLANNING

4.4.1 Spatial planning

Spatial planning is a process that is entwined with strategic planning and requires a strategic thinking ability whereby the vision is understood, and the purpose is clearly defined to enable the formulation and prioritization of programmes and projects. Strategic thinking advocates that proper planning prevents poor performance. Prioritization need to be at strategic and operational level to yield desired outcomes. Prioritization is also depended on the established and solid purpose that can allow alignment of related variables and focused decision making. Strategic planning determines hierarchies of importance in goal setting, budgeting, implementation, management and reporting. Spatial planning thus becomes outcome based.

Section 4 of SPLUMA categorises the spatial planning system into three, namely: municipal planning, provincial planning and national planning. It does not provide any hierarchy to the planning system. The planning systems must be in harmony with each other, promoting coordinated strategies that can be implemented by promoting spatial justice, spatial sustainability, spatial resilience, efficiency and good administration.

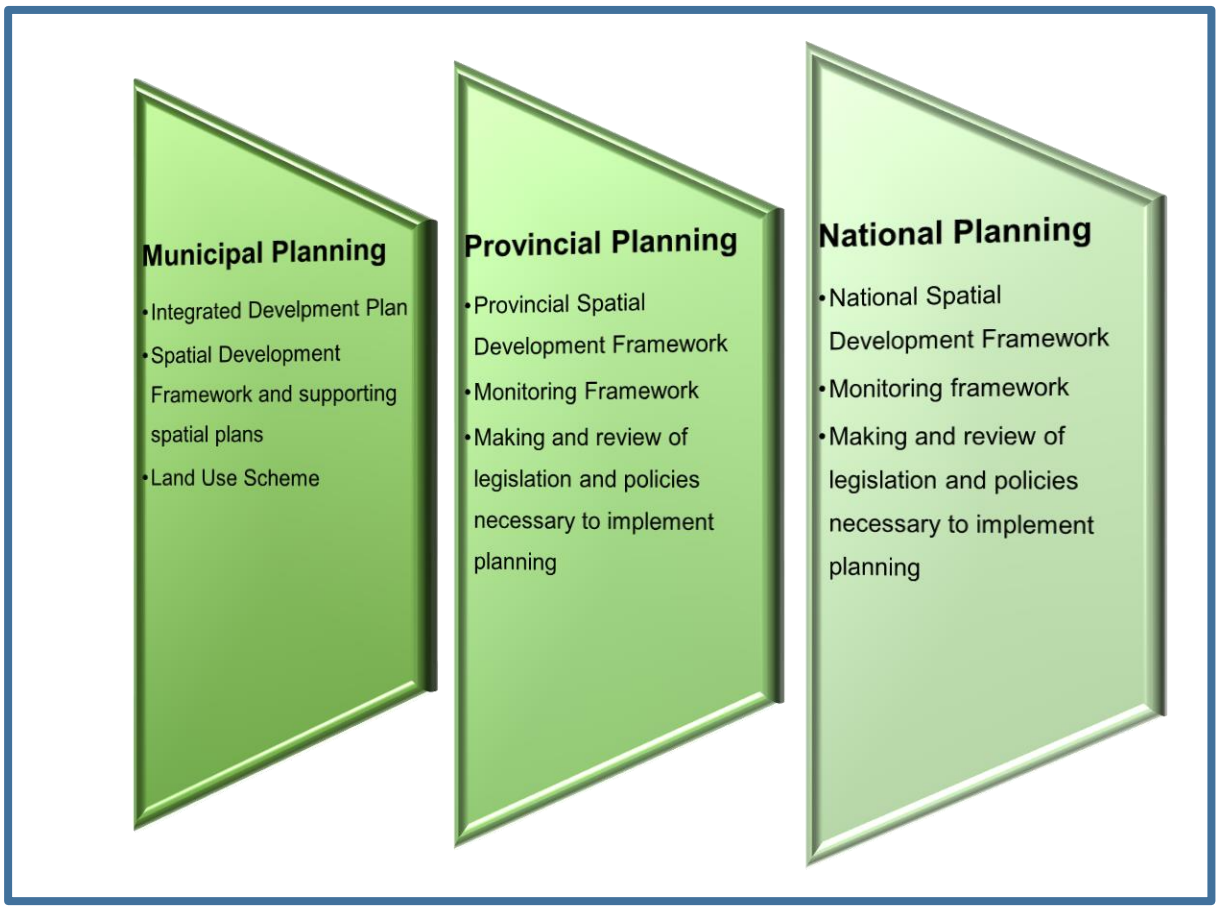


Figure 4.7: *South African planning system*
Source: Own Construction (2019)

The national, provincial and municipal planning systems must translate into and reflect the National Development Plan provisions into specific strategies and guidelines. Such requires that all three spheres of government develop a sphere-specific Spatial Development Framework (SDF). The spheres-specific SDF must clearly define the desired spatial forms with associated indicators guiding spatial outcomes and identify and resolve cross-boundary issues found within provinces or municipalities. The national, provincial and municipal planning system must promote alignment and coordination in the budgeting processes to ensure strategic and realistic development outcomes as per the government's development and transformative agenda.

Figure indicates the relationship between a sphere specific SDF, the Regional Development Framework and the National Development Plan.

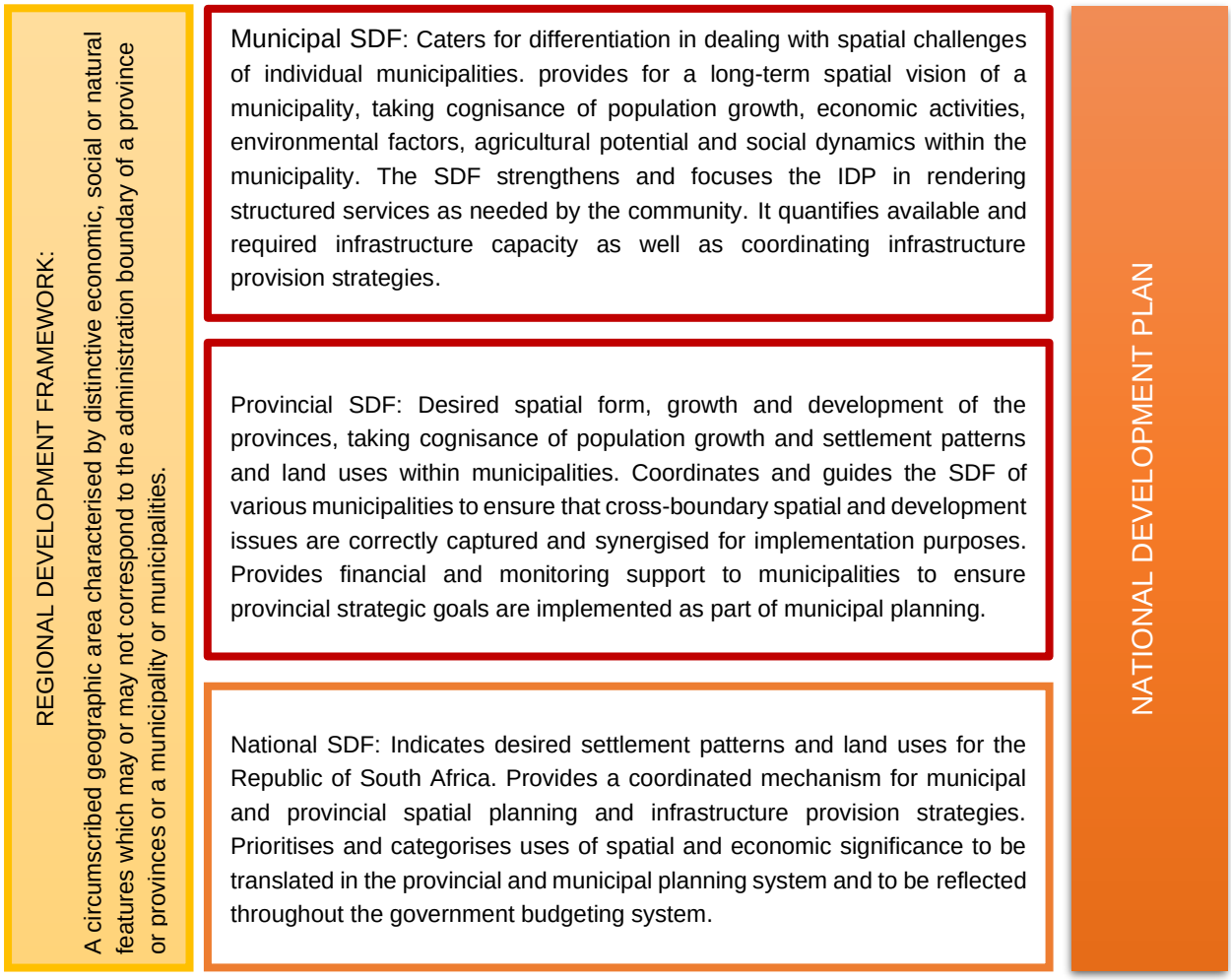


Figure 4.8: Spatial development framework

Source: Own construction (2019)

There is a need to rethink the manner in which spatial development framework are done in South Africa. Analysing the content of the national, provincial and municipal spatial development framework, the alignment remains an impression rather than empirical. Often the alignment

process is hampered by the fact that development of spatial development framework does not happen in a sequential order. South Africa has produced a draft National Development Framework in 2018. It is the first National Spatial Development Framework ever produced in South Africa. Meanwhile, municipalities and provinces have produced and reviewed their respective spatial development frameworks without guidance from the national spatial vision. The absence of the national development spatial vision has created a disjointed spatial priority environment as municipal spatial strategies are not responding to a national strategic and focused based spatial vision. Ledger and Meny-Gebert (2018:3) states that plans in South Africa are often disconnected from the reality of their implementation, silent about choices that have to be made in an environment of limited fiscal resources and with no coordination and complementary mechanism for alignment across the public sector. Schoeman (2015:4) attribute the lack of delivery within all spatial systems as indicative of failing alignment and integration processes.

It is the researcher's submission that the lack of national strategic and focused spatial vision that direct the prioritisation of spatial programme and project contributes to the slow pace of spatial transformation in the country. The vision and strategic imperatives of the provincial spatial development framework must feed from the well-defined vision provided for in the national spatial development framework.

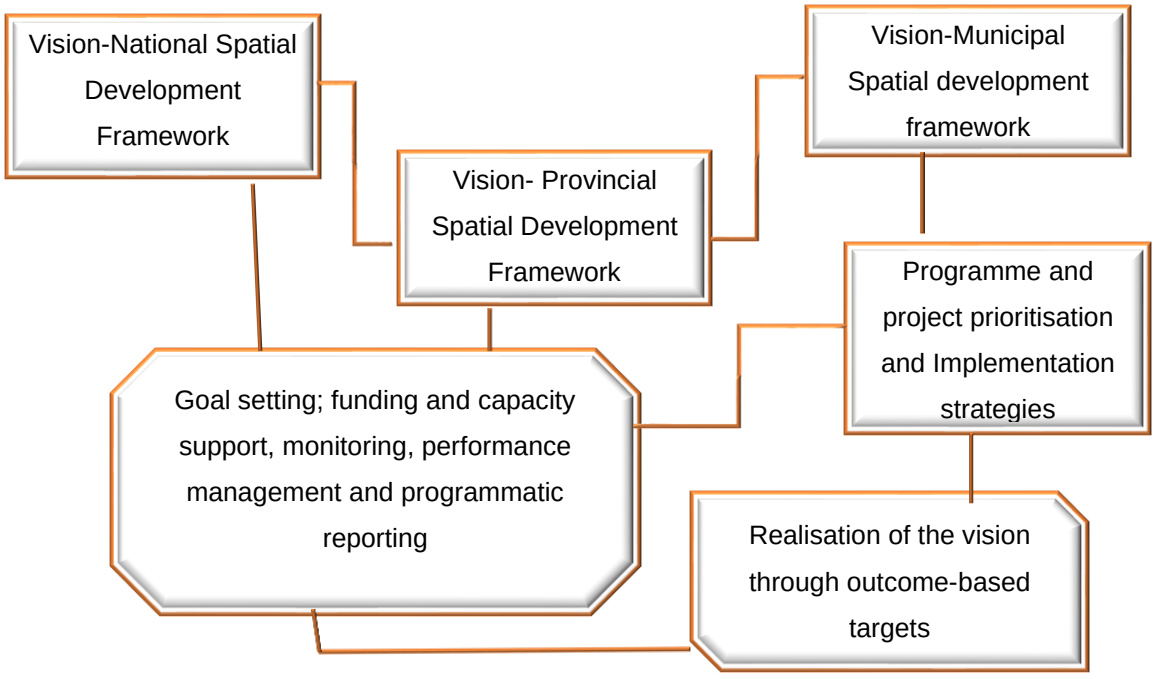


Figure 4.9: Spatial Development Framework of the three spheres of government with aligned spatial vision and consistent programmes and project prioritisation strategies.

Source: Own Construction (2019)

The municipalities thus feed from the well-defined vision provided for in provincial spatial development framework. By carrying through the same vision, the strategic plans and goals will then respond systematically to the provincial and municipal specific needs without deviating from the set national spatial vision. This will promote consistent need prioritisation, structured funding and budgeting model, integrated implementation plans and outcome-based performance management plan as well programmatic reporting system. Below is the diagram indicate the alignment of spatial vision influencing the spatial development framework of the three spheres of government.

Schoeman (2015:42) takes the above submission diagram and expand on it, stating that national, provincial and municipal planning systems require alignment between spatial planning, transportation planning and environmental management. Schoeman's statement is proven correct by the Draft National SDF (2018:69,134) stating the need to support, improve and maintain the corridors that link national urban cores. Furthermore, to protect and maintain a sustainable ecological infrastructure system for a shared and sustainable resource foundation.

Akinmoladun and Oduwaye, (2008:212) added to the discussion by stating that spatial planning approaches which guide physical development on any city or town, depend on zoning regulations. Du Plessis (2015:1865) has stated that municipal planning both strategic and spatial is likely to turn out to be a critical government instrument to tackle issues of contravention of building codes and zoning regulation and property law. Wilhelm-Rechmann and Cowling (2013:2&5) stress the importance of municipal processes that promote integration of biodiversity into the land use planning processes as spatial planning alone cannot achieve integrated spatial and land use outcomes such as conservation goals. Du Plessis (2015:1865) regard environmental management, environmental government and climate change as components essential to effective municipal planning function whereby the urban community is strengthened and, resilient to determine people interaction's with space. The land use planning processes, together with spatial planning, operates within a land use management system. Thus, municipalities must be financially supported and intellectually capacitated operate a functional land use system that can respond to the spatial transformation vision provided for in the three spatial development frameworks.

The following section defines the land use management system and how alignment of spatial planning policies and sectorial plans such as transportation and environmental strategies get to be translated for implementation purposes.

4.4.2 Land use management system

The SPLUMA provides a legislative framework and apparatus for spatial planning, land development and land use management. The land use management system is an all-encompassing apparatus and is defined as a system of regulating and managing land uses and conferring land use rights through the application of land use scheme and land development procedures. The land use management system provides for a consistent value chain associated with the land development process, translating land use activities into coherent and structured land development projects that promote economic growth, physical and social development. It further refers to a mechanism that enables the commission of a strategic and integrated institutional arrangement that deals with land development, management and regulatory activities (Draft Land Use Management System Guideline, 2014).

The land use management system has multiple components that are unique yet complementary and interdependent on one another; therefore, each component needs to be fully operational to be effective.
Figure indicates the components of a land use management system.

Each component plays a critical role in the land development value chain. One component informs the other; hence being called a system for land use management. It provides a process for land development and land use management.



Figure 4.10: Components of a land use management system

Source: Draft Land Use Management Guideline (2014)

4.4.3 Land development and land use management process

The land development and land use management processes are legal in nature as they are regulated by the manner in which land can be developed, indicating by whom, when and how (development parameters). Wilkinson (1985:6) proposes an interesting dimension stating that in the legal process related to land development, land use management provides a structural framework and the legal controls for rational, intelligent and informed land use decision making.

The process enables the linkage to connect multiple and different substantive disciplines that make up the complete planning process. Furthermore, the land development and land use management process manage, protects and balances the use of land by all land users, including the residents, business owners, and local and international investors.

National and provincial government and organs of state in the three spheres of government are not exempted. The Tshwane Metropolitan Municipality promulgated their by-law on spatial planning and land use management in 2016 which allows no exceptions as it reads:

[T]his by-law applies to all properties within the jurisdictional geographical area of the Municipality, including properties owned by the states. It binds every owner and their successor in title and every occupier of a property(ies), including the state.

Thus, any person, organisation or department wanting to develop or use the land within the municipal area of jurisdiction must comply with the development processes by submitting a land development application to obtain the correct developmental rights before developing or constructing any building or structure to be used for the purpose of conducting any business or socially-related services, for example dwelling houses, a fire station, a hospital, schools, shops, filling stations, mining and a golf course. The land development and land use management processes are thus systematic and operate in a cycle comprising different phases. Each phase is legislated and has processes and procedures to be followed. Figure is an example of such a land development cycle.

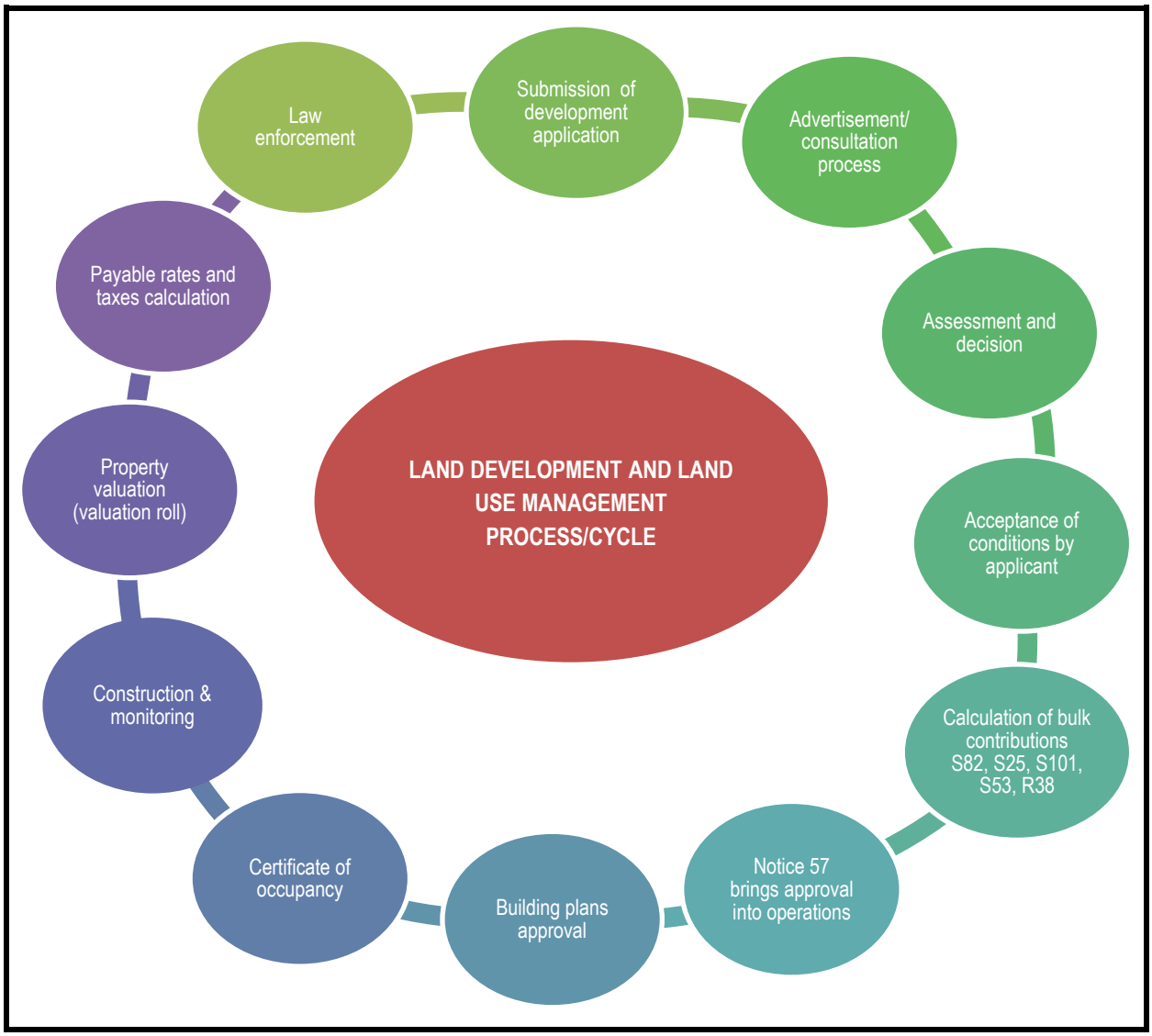


Figure 4.11: Land development application process

Source: Own construction (2019)

4.4.4 Land development application process

4.4.4.1 Assessment and decision-making by a municipality

The land development and land use management processes are reactive in nature; it relies on a need to develop. Once a person has established a need to develop as per the approved policies and legislation, a land development application is submitted. This is where the complexities of municipal planning begin. Section 42 of SPLUMA states that in considering and deciding an application, a Municipal Planning Tribunal must:

1) Be guided by the development principles;

2) Make decision which is consistent with norms and standards, measures designed to protect and promote the sustainable use of agricultural land, national and provincial government policies and municipal spatial development framework; and

3) Take into account- the public interest; and the constitutional transformative imperatives; the state and impact of engineering services, social infrastructure and open space requirement and any factors that may be prescribed, including timeframes for making decisions;

Furthermore, SPLUMA section 42(2) states that when considering an application affecting the environment, a Municipal planning Tribunal must ensure compliance with environmental legislation. SPLUMA provide for the three decision making bodies:

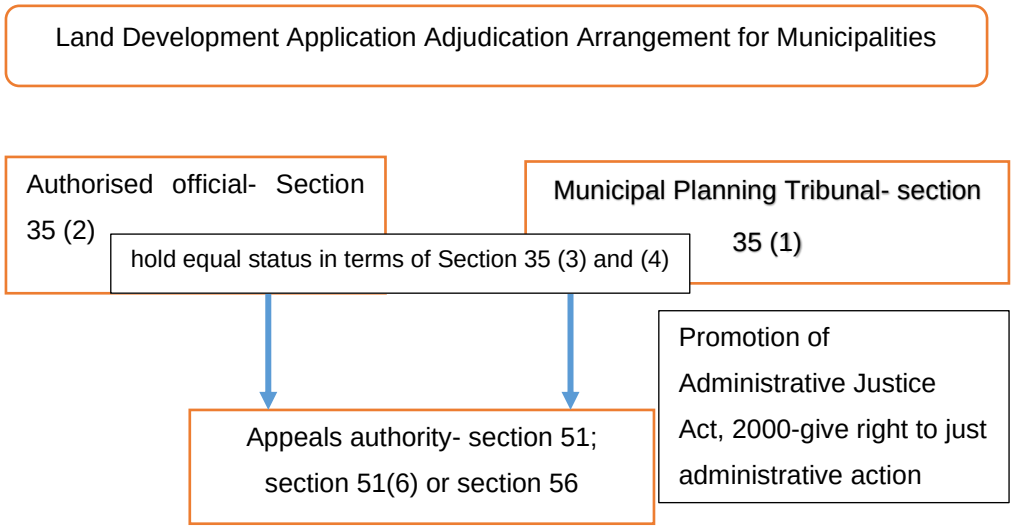


Figure 4.12: SPLUMA Land Development Application Adjudication Arrangement

Source: Own Construction (2019)

The SPLUMA land development application adjudication arrangement needs to be consistent with the Promotion of Administrative Justice Act, 2000 (PAJA,2000). This will be in keeping with the principle of natural justice that dictate that person who are affected by administrative action should be afforded of fair and unbiased hearing before the decision to act is taken (Laubscher *et al* 2016: 213).

There are pre- and post-approval stages that are part of a land development application process. Table shows the land development application procedure.

Table 4.2: Development application procedure

DEVELOPMENT APPLICATION PROCEDURE (authorisation processes and specialised studies are adhered to as per any other applicable legislation)

PRE-APPROVAL PROCEDURE

- Role of the applicant: Applicant submits a land development application; advertises for public participation; place site notice; waits for the commenting period to lapse; responds to comments when required; accepts conditions; pays bulk contribution; satisfies legal administration processes; gets building plans approved and then starts developing. (Attends the tribunal process if required.)
- Role of the municipal town planner: Receives the application; circulates the application to internal department and on request to the external department; receives comments; assesses the application; writes a report with recommendations; forwards the report for final decision to be approved or refused.

POST-APPROVAL PROCESS PER DEVELOPMENT APPLICATION TYPE

Rezoning application	Removal of restrictive conditions application	Subdivision application	Consolidation application
Writes a letter to applicant Compiles and approves ETOPS annexure Prepares promulgation notice Requests final contribution fees from service departments Sends promulgation notice for placement in Government Gazette Section 63 letter to be sent to the owner within 30 days after promulgation	Writes a letter to applicant Proclamation Applicant to submit Title deed to Registrar of Deeds **CONSENT USE APPLICATION** Letter to applicant notifying applicant of approval and payment of contributions **TOWNSHIP ESTABLISHMENT APPLICATION** Applicant receives resolution and accepts draft conditions of establishment to be incorporated into the town planning scheme Approved General Plan submitted (Applicant) Applicant applies for section 101 certificate	Letter to applicant, including endorsed plan Application submitted to Surveyor General (Applicant) Approved General Plan submitted (Applicant) Request for Regulation 38 (Applicant) Obtain comments from departments on adherence to conditions Draft and approve Regulation 38 Certificate to Finance	Letter to applicant Application submitted to Surveyor General **DIVISION OF LAND APPLICATION** Letter to applicant Application submitted to Surveyor General (Applicant) Approved General Plan submitted (Applicant) Request for Section 25 (Applicant) Obtain comments from departments on adherence to conditions Draft and approve Section 25 Certificate to Finance

Rezoning application	Removal of restrictive conditions application	Subdivision application	Consolidation application
	Submit proof of compliance with pre-proclamation conditions Section 101 certificate is issued by municipality Application for services agreement is submitted by the applicant Opening of the township register by the Registrar of Deeds Services agreement is finalised and signed by the developer and the council Section 82 certificate can be issued once all conditions in the Services Agreement have been complied with and all contributions/ endowments have been paid by the applicant Proclamation of the township in terms of section 103.		
The processes vary from two months (consolidation application); four months (consent use application); 12 months for (rezoning application) to 18 months (township establishment application) if there are no delays in complying with all legislative requirements. The process may be more if there are objections, and appeals procedures are added as part of a land development application. **These time frames include both administrative and legislative procedures.**			

Source: Own construction (2019)

4.4.4.2 Illustration of national and provincial requirements on a single land development application

Before a decision can be taken on a land development application as mentioned above, both the national and provincial spheres of government have a role to play. A land development application is subjected to multiple pieces of legislation. Scenario: A land development application for a filling station on a farm portion requires authorisation from national and provincial government in terms of various pieces of legislation. To demonstrate the multiple authorisations that a single land development application is subjected to, the following three types of authorisation may be required:

- Environmental impact assessment (Figure 2.9).
- Changes in land use and public transport infrastructure – traffic impact study (Table).
- Water Use Licence (Table).
- Process of applying for a petroleum licence (Figure 2.10).

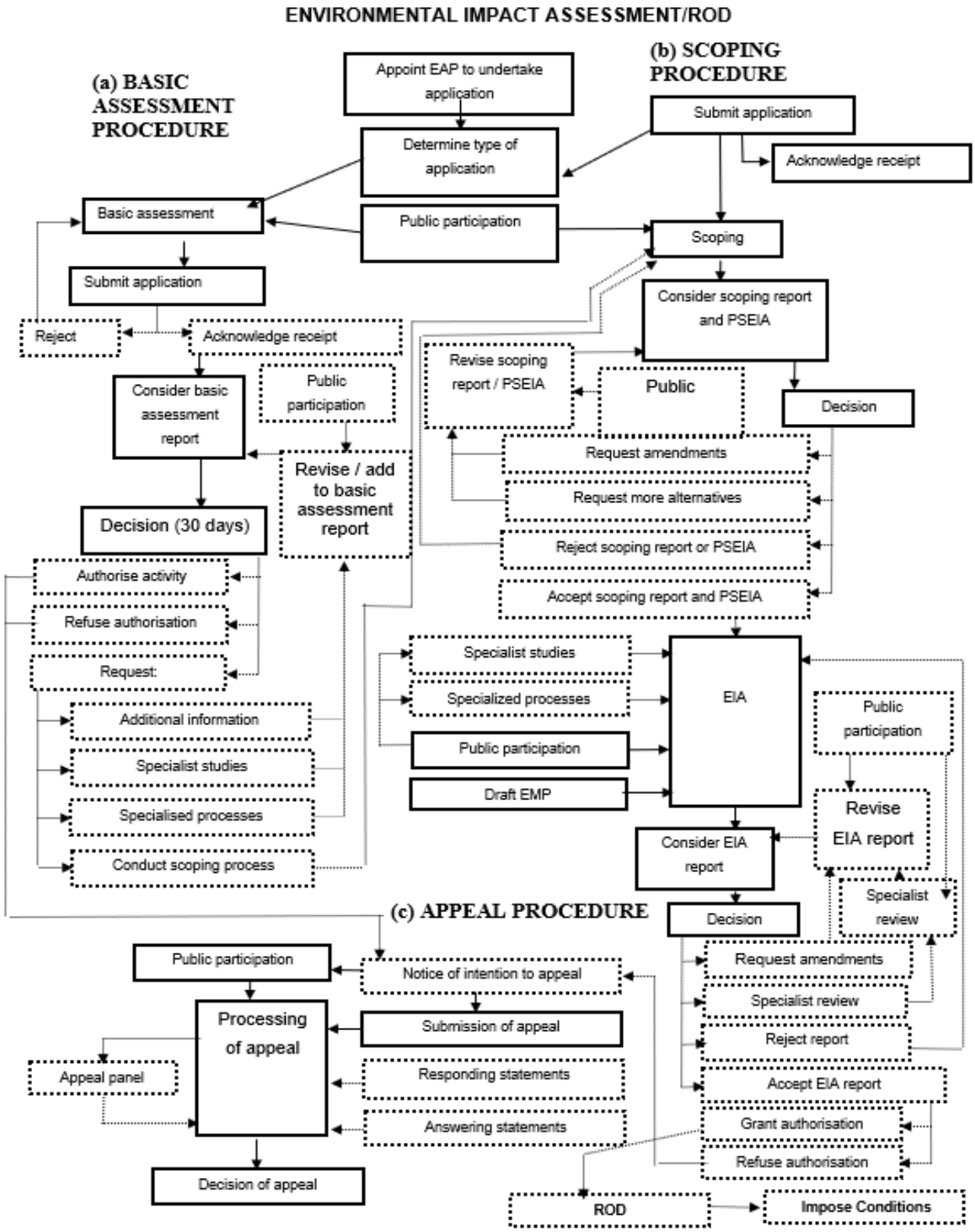


Figure 4.13: *Environmental impact assessment process*

*Source**:** DEAT (2005)*

Table 4.3: Changes in land use and public transport infrastructure

Lodge application	Application of substantial changes in land use and development proposals
Circulate application	Within **14 days** of receipt of the application and prior to ruling, submit the application to the relevant planning authority for its assessment and determination of the impact of the application on the integrated transport plan and public transport service
Traffic impact assessment	Conduct a traffic impact assessment and public transport assessments
Decision by planning authority	Planning authority to approve or refuse the application within **90 days** and provide written reasons for the decision taken
Decision by the roads and transport authority	The authority must make a decision, but may not approve such application, in conflict with the directions of or conditions required by the planning authority as contemplated in the report
Appeal	Where an applicant or any person is aggrieved by any decision of a planning authority such person may appeal against the decision in the manner and within the time prescribed

Source: Department of Transport (2009)

Table 4.4: Water use licence application process

Duration (days)	Water use licence application process
7	**STEP 1 – PRE-POSITION AND VALIDATION** This is done when the licence application is received and is used to check if everything needed to process the licence is available. You will be asked to provide missing information and may get initial feedback before you pay your application fee.
10	**STEP 2 – NOTICE OF INTENT AND ACKNOWLEDGEMENT OF NOTICE** Applicant informs the responsible authority of the intent to apply for a water licence (within five days for mining-related applications)
10	**STEP 2 – INITIAL ASSESSMENT AND GROUPING** This includes a quick assessment of the possible impacts and benefits of the proposed water use. In some cases, a simple set of questions will be used to help make this assessment.
30	**STEP 3 – REGIONAL ASSESSMENT** This step is done in the regional office where you made your application. The regional office gathers all the information required to make a decision on whether to approve the application and makes a recommendation to the national office.
100	**STEP 4 – EVALUATION BY THE NATIONAL OFFICE** Your application is then evaluated by specialist groups. These groups also make recommendations on the application. The application is then submitted to the Chief Director: Water Use for a decision.
120	**STEP 5 – DECISION BY THE CHIEF DIRECTOR: WATER USE** After considering all the relevant information, the Chief Director: Water Use will make a decision on whether to approve the application.
23	**STEP 6 – IMPLEMENTATION** Once a decision has been made, the regional office will be informed, and they can start with implementing the licence. They will then inform you of the outcome of the application, and if approved, will issue the licence as well as highlighting any conditions that might be attached to your water use.

Source: Own compilation(2019)

Land development applications that require a Water Use Licence can take anything from 3 to 12 months to process, depending on the complexity of the licence, its benefits to the nation, and its possible impacts. Generally, low-impact, high-value licences will be processed faster. The applicant may also be asked, at any stage, to provide more information, or to advertise the proposed water use, and to invite interested and affected parties to comment. A licence cannot be issued for a period longer than 40 years but may be issued for shorter periods if necessary.

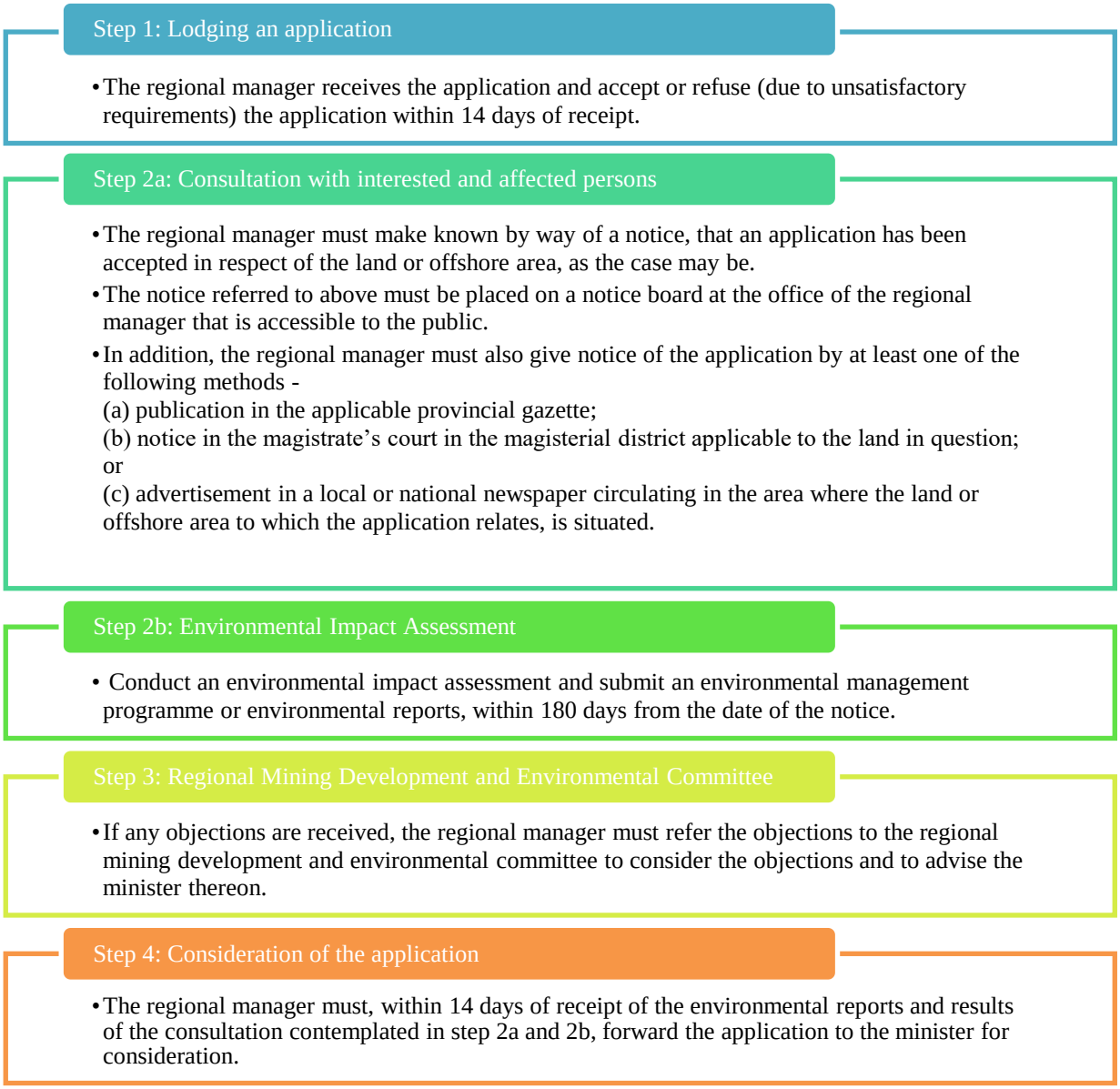


Figure 4.14: Process of applying for a petroleum licence

Source: Department of Mineral Resources (2002)

When the authorisation process as mentioned above has been satisfied, only then can the development application be considered for approval. It should be noted that each authorisation process has its own requirements and associated time frames. Development is hampered when authorisation processes are not streamlined or integrated, resulting in slow economic growth and job creation.

There is another factor that impedes progressive growth and development, and that is the slow pace in land reform. This study is not designed to extensively deal with land reform in its totality. However, it is important to highlight how factors pertinent to land reform impacts on municipal planning, growth and development of a municipality. As mentioned previously, municipal planning and land reform are mutually inclusive. Kayode and Bayo (2012:31), in agreement with the latter statement, submit that both land and planning laws should be incorporated for the benefit of the society so that they could adequately supplement one another; hence, the need to explain the relationship between the two concepts in order to complete the body of knowledge highlighted in this study.

4.5 LAND REFORM AND MUNICIPAL PLANNING

In section 4.4 above, the concepts of land use management system, land development and the land development management process as part of municipal planning were deliberated on. The discussion below explores the relationship between land reform and municipal planning. The discussion is divided into three sections: defining of land reform, legislation pertinent to land reform and relationship between land reform and municipal planning as depicted in Figure below.

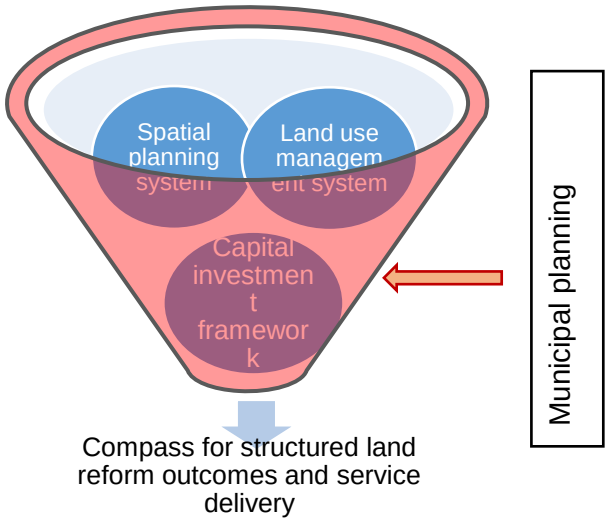


Figure 4.15: *Relationship between land reform and municipal planning*
Source: Own construction (2019)

4.5.1 Defining land reform

This study defines land reform as a process that involves proprietorship and redistribution of land for the purposes of redressing the dishonest access to land by unauthorised persons using apartheid laws. Land reform is made up of three pillars: Land redistribution; land restitution and land tenure.

4.5.1.1 Land redistribution

Land redistribution is a provision found in section 25 of the Constitution. Section 25(5) states that the state must take reasonable legislative and other measures within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis. Section 25(8) states that "no provision of this section may impede from taking legislative and other measures to achieve land, water and related reform, in order to redress the result of the past racial discrimination". Land redistribution caters for expropriation of land and is supported by Section 25(2) of the Constitution, stating:

> *"property may be expropriated only in terms of law of general application-*
>
> (a) For a public purpose or in the public interest; and
>
> (b) Subject to compensation, the amount of which and time and manner of payment of which have either been agreed to by affected or decided or approved by a court.

Section 25(4) states:

> For the purpose of this section-
>
> (a) The public interest includes the nation's commitment to land reform, and to reforms to bring about equitable access to all South Africa's natural resources; and
>
> (b) Property is not limited land.

4.5.1.2 Land restitution

Land restitution is a government process that seeks to return land to individuals or groups who were unjustly deprived of their land rights since 19 July 1913, using the 1913 Natives Land Act that saw thousands of black families forcibly removed from their land by the apartheid government. The Act restricted black people from buying or occupying land, except as employees of a white master. White people took ownership of 87% of land and left 13% to black people. Such action by white people resulted in black people being unable to provide food for themselves through crop farming but were forced to become employees of white people. The 1913 Natives Land Act altered the socio-economic status of the country; hence to date, there are socio-economic challenges that are difficult to resolve despite various government programmes (Natives Land Act, 27 of 1913, Centenary).

4.5.1.3 Land tenure

Hull and Whittal (2018) mention that land tenure is about securing and protecting customary and informal land rights that were left vulnerable by land policies and apartheid. Clark and Luwaya (2017:3) state that tenure security refers to the legal and practical ability to defend one's ownership, occupation, use of, and access to land from interference by others. Land tenure and security is enabled by section 25(6) of the Constitution which states that "a person or community whose tenure of land is legally insecure as a result of past racially discriminatory laws or practice is entitled, to the extent provided by an Act of Parliament, either to tenure which is legally secure or to comparable redress".

4.5.2 Legislation pertinent to land reform

The common thread found in legislation pertinent to land reform is access to land or property and security of tenure as shown in Table .

Table 4.5: Legislation pertinent to land reform

Legislation	Objective
Land Reform (Labour Tenants) Act (3 of 1996)	To provide for security of tenure of labour tenants and those persons occupying or using land as a result of their association with labour tenants; to provide the acquisition of land and rights in land by labour tenants; and to provide for matters connected therewith.
Restitution of Land Rights Act (22 of 1994)	To provide for the restitution of rights in land to persons or communities dispossessed of such rights after 19 June 1993 as a result of past racially discriminatory laws or practices.
Interim Protection of Informal Land Rights Act (31 of 1996)	To provide for the temporary protection of certain rights to and interest in land which are not otherwise adequately protected by law; and to provide for matters connected therewith.
Extension of Security of Tenure Act (62 of 1997)	To provide for measures with state assistance to facilitate long-term security of land tenure; to regulate the conditions of residence on certain land; to regulate the conditions on and circumstances under which the right of persons to reside on land may be terminated; and to regulate the conditions and circumstances under which persons, whose rights of residence has been terminated, may be evicted from land and to provide for matters connected therewith.
Prevention of Illegal Eviction from and Unlawful Occupation of Land Act (19 of 1998)	To provide for the prohibition of unlawful eviction; to provide for procedures for the eviction of unlawful occupiers; and to repeal the Prevention of Illegal Squatting Act, 1951, and other obsolete laws; and to provide for matters incidental thereto.
Housing Act (107 of 1997)	To provide for the facilitation of a sustainable housing development process; for this purpose to lay down general principles applicable to housing development in all three spheres of government, to define the functions of national, provincial and local governments in respect of development and to provide for the establishment of a South African Housing Board, the continued existence of provincial boards under the name of provincial housing development board and the financing of national housing programmes; to repeal certain laws and to provide for connected therewith.

Legislation	Objective
Expropriation Act (63 of 1975)	To amend the Expropriation Act so as to define, further define or delete certain expressions; to extend the power to expropriate to any minister responsible for the administration of work and land affairs; to restrict expropriation by Transnet to expropriation under the Legal Succession to the South African Transport Services Act, 1989; to facilitate the expropriation procedure; to extend payment of compensation in respect of unregistered rights; to extend penal provisions; to further regulate offers and claims relating to compensation, disposal of the amount of compensation, payment of interest, payment of legal costs and withdrawal of expropriation; and to repeal certain obsolete provisions; to effect certain consequential amendments to the Water Act (1956; to amend the Deed Registries Act (47 of 1937), so as to facilitate the recording of expropriation; to amend the Legal Succession to the South African Transport Service Act (Act 9 of 1989), so as to regulate expropriation by Transnet anew; and to provide for matters connected therewith.

Source: Own construction

4.5.3 Relationship between land reform and municipal planning

The land use management system as part of municipal planning plays a central role in land development, economic growth and infrastructure provision. The land use management system relies on each component for it to be effective in yielding tangible results associated with job creation, social inclusion and institutional arrangement. When all components of land use management system are coordinated, a municipality has the ability to attract and retain the much-needed investment through systematic business value chains.

The Mail and Guardian (2018) stressed the need to evaluate black empowerment “to ensure that it truly becomes broad-based while minimising adverse effects on investment”. However, the observation made by the researcher is that economic policies, institutional arrangement, even coordinated and effective land use management systems, will not yield much desired developmental outcomes when land issues are not addressed accordingly, ensuring that access to land is just and beneficial to all as envisaged in the Freedom Charter of 1955. Land reforms must be part and parcel of government’s economic and development agenda.

Findley and Ogbu (2011) argued that apartheid is often largely construed as a political construct, but architecture and planning were critical in implementing apartheid policies to such an extent that during the nineteenth and twentieth centuries the pass laws were also used to control movement, settlement and employment of African people, by removing them from the urban areas. This argument is proven true as municipal planning, prior the promulgation of SPLUMA, only recognised properties or land located in registered and proclaimed townships. This meant that the Land Use Scheme, as legal instrument used to confer developmental rights to a property, was only applicable to those townships or properties recorded in terms of the Deeds Registry as provided by the Town Planning Legislation (Town Planning and Township Ordinance). As a result,

townships are categorised as formal (within a planning system) and informal (outside the planning system).

Formal townships enjoy the most benefits associated with security of tenure and infrastructure provision and could easily participate in the economic arena through the support from financial institutions. De Visser (2013:1) draws the correlation with the previously white-led municipalities who “were given exclusive power to tax properties in well-resourced and viable commercial centres, without any obligation to use the revenue to improve the lives of township dwellers. Black municipalities were undemocratic and starved of income and authority.”

As mentioned by De Visser and supported by the *Mail and Guardian*, the disparity or the inequality comes from the lack of security of tenure. Currently, access to land and property is linked to financial affordability of individuals. The lack of title deeds to property, especially in poor and informal areas, limits the property to be market valued. Financial institutions have rules that do not distinguish between land or properties found in formal and informal townships and land or properties where ownership is not clear. Any land or property that is still under government lease hold, is not recognised as an asset that can be used as collateral when lending or borrowing from a financial institution. As a result, informal townships are largely excluded from economic gains, creating high levels of unemployment and dependency of state grants for survival.

In Gauteng, the land tenure system is divided into publicly owned land and state-owned land. Both publicly and privately-owned land are part of the formal land administration system. Table shows the land transactions between privately owned land and state-owned land:

Table 4.6: Land transactions between privately owned and state-owned land

Privately owned land	State-owned land
Access to land or property benefits individual(s) who can afford	Access to land or property benefits everyone, despite the financial affordability status
Access to social, health, educational facilities is by affordability	Access to social, health, educational facilities is open to everyone
Private roads are limited to authorised individuals	Public roads are accessible to everyone
Acquisition of land or property is guided by market value	Acquisition of land or property is through a set of qualification criteria with the exclusion of certain income brackets earned by individuals

Source: Own Construction (2019)

Despite the difference in the access or use of land or property, both privately and publicly owned land is found within the municipal area of jurisdiction. Therefore, all land must be included in a formal system to ensure inclusion to the benefits associated with the land use management system. Section 3(b) of SPLUMA states that “the system of spatial planning and land use

management promotes social and economic inclusion". In order for the municipality to address the socio-economic status of communities, land reform must be part and parcel of municipal planning.

During the State of the Nation Address (2019), President Ramaphosa stated:

> *The structure of our economy was designed to keep assets in a few hands. This has stifled growth and enterprise and has, to a large extent, kept many young South African entrepreneurs and small enterprises out of the economy or confines them to the margins.*

Land reform is seen as the vehicle to achieve government development outcomes as mentioned by the President so as to reduce poverty and the unemployment rate, and to promote entrepreneurship and increase productivity of agricultural land and food security through access to land. The President, during the State of the Nation Address (2019), further stated:

> *Strategically located land will be released to address human settlements needs in urban and peri-urban areas.*

In light of the President's address, in order for a municipality to accelerate access to land, they must explore land redistribution as a pillar essential in creating settlements that are tenure secured, inclusive, viable and sustainable. Land reform, whether through redistribution or restitution, must take place within municipal planning as provided for in terms of SPLUMA.

Recently, President Ramaphosa, as captured by *Business Day* (2018) stated:

> *South Africa's historical, highly skewed distribution of land and productive assets is a source of inequality and social fragility.*

Siphelele Dludla from *IOL News* (2019) recorded President Ramaphosa, explaining the expropriation without compensation:

> *We are going on with land reform and we will utilise land expropriation without compensation as one of the measures that can be used. The issue of the expropriation of land without compensation has always been part of the Constitution construct that we have, and the current process is to make it clear.*

Both the above-mentioned statements by President Ramaphosa are an indication that South Africa has chosen land redistribution using expropriation of land without compensation. Even though the researcher is in support of the President's pronouncement, Du Plessis, (2009:131) provides a compelling argument that compensating the owner of expropriated property at market value as provided for by section 25 of the Constitution might be expensive and far-reaching in achieving government goals for land reform.

4.5.3.1 Legislative framework on land redistribution and municipal planning

Since the South African government has chosen expropriation without compensation in order to gain land for redistribution, it becomes important to declare that this study is not designed to discuss the parameters of expropriation with or without compensation from the economic point of view but rather provides for a framework and processes that can guide land redistribution as part of municipal planning.

According to Du Plessis (2009:31):

> *Expropriation is usually a unilateral act by the state which … based on operation of law, acquires private property, where the loss of property for the former owner is usually total or permanent. The property is ordinarily acquired by or on behalf of the state for a public purpose or in the public interest and compensation is payable.*

The parameters in which expropriation can take place stem from the Constitution, where the just factor is introduced. The just part means the municipality must do their due diligence in identifying properties or land to be expropriated. The purpose of the expropriation must be able to serve the public interest. From the municipal planning point of view, the study suggests that expropriation, over and above being just, must not undermine municipal laws and systems applicable to achieve development principles as contained in Chapter 2 of SPLUMA and the NDP. These principles are:

i. Spatial justice
ii. Spatial resilience
iii. Spatial sustainability
iv. Good administration

The combination of the Spatial Planning System, Land Use Management System and Capital Investment Framework is seen as a compass to a structured land reform outcome. This means all pieces of legislation, strategies and plans need to be read together with an understanding of the desired government results of addressing the spatial, economic and social imbalances of the past, while building a developmental state characterised by land tenure security measures.

Figure below demonstrates land reform as part and parcel of municipal planning. The tree is used figuratively to show the intricacies of municipal planning and land reform. The tree is divided into four parts: a roots system (land reform pillars); a stem (municipal planning); a crown (legislation and policies applicable to the three spheres of government); and the soil (the Constitution).

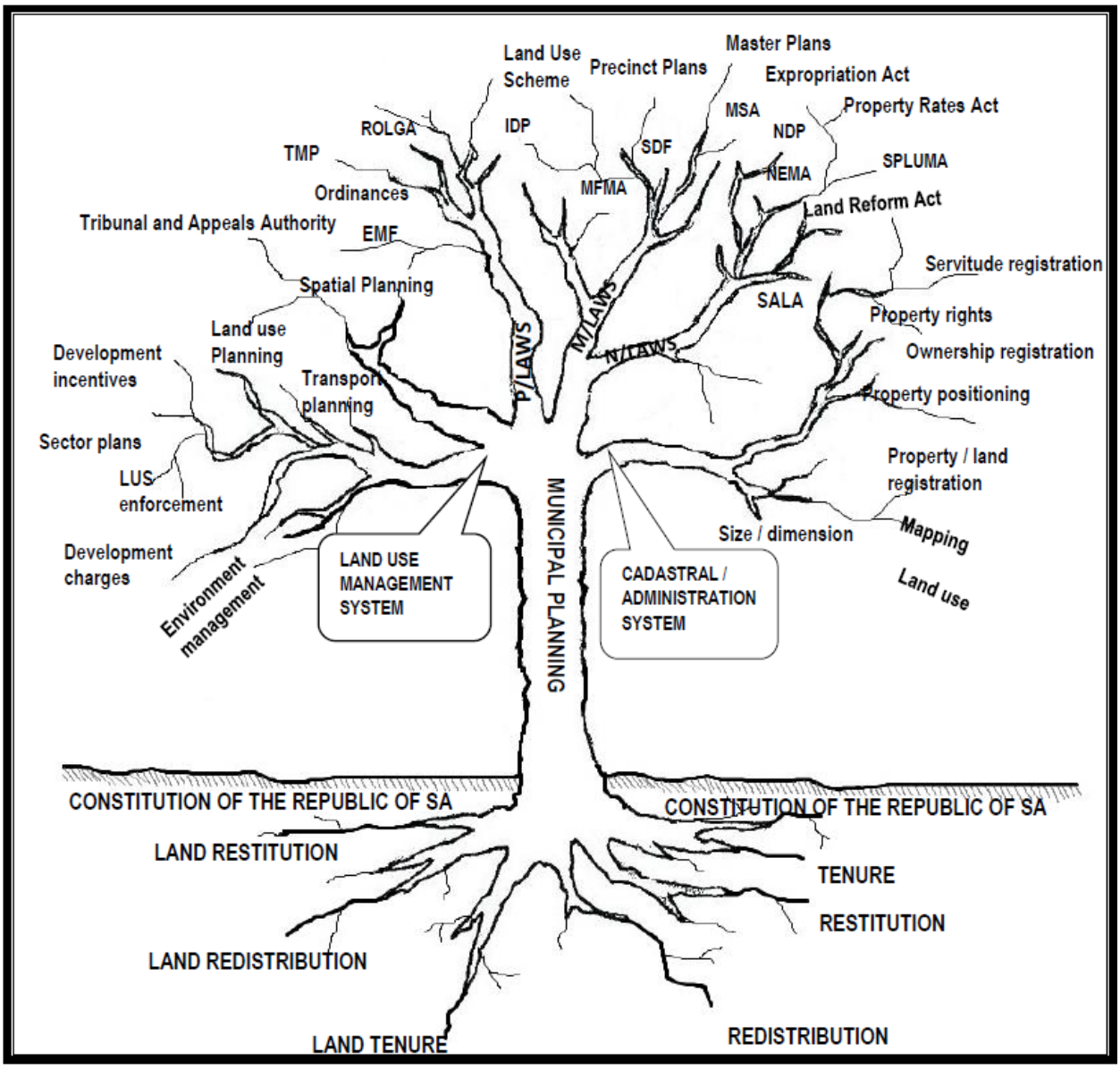


Figure 4.16: Municipal planning and land reform tree

Source: Own construction (2019)

The above municipal planning and land reform tree indicates the interrelatedness of government laws guided by the Constitution. The roots system represents the land reform system comprising three pillars, being restitution, redistribution and tenure, as no country can truly flourish when challenges associated with land ownership and access are not resolved. When land does not benefit everyone as per the Freedom Charter, South Africa will remain an uneven society where the black population, despite being the majority, will remain poor in their place of origin. The stem of the tree represents municipal planning which is the core support system for implementing service delivery and economic growth. Through the stem comes the crown with branches and leaves. The three main branches represent the spheres of government and each sphere has multiple sub-branches with leaves representing legislation, policies and, frameworks. For the land

reform and municipal planning tree to be effective, it requires the Constitution. In this tree analogy, the soil represents the Constitution which is an anchor for fundamental rights and constant growth. The tree demonstrates interdependence and relatedness of structural components that are essential for successful land redistribution.

Having used the analogy of the tree, it becomes clearer how municipal planning is a highly regulated and complex function. Therefore, by expecting local government to be the agent of land redistribution may seem to be further complicating and burdening municipalities. However, it is the submission of the researcher that when land reform takes place within municipal planning, land redistribution will be structured in a manner that benefits the community and ultimately the country. This submission is supported by section 26(5) of SPLUMA which states that a municipality may, after a 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) in order to further the vision and development goals of the municipality.

Furthermore, the development principle of spatial justice provided for in section 7-(a) (v) of SPLUMA which mentions that the land development procedures must include provisions that accommodate access to secure tenure as well as the incremental upgrading of informal settlement areas. Of importance, is the mention of recording of all transactions associated with land development and notification of the Surveyor-General and the Registrar of Deeds. Section 46(2) of SPLUMA proceeds by stating that upon receipt of the notification, the Registrar of Deeds or the Surveyor-General must endorse the affected records to give to such decision.

In light of the SPLUMA, recognition of keeping proper records and involvement of the Registrar of Deeds and Surveyor-General in all land development applications, the same principle applies to land reform. When land is redistributed, the process will impact on land registration and the cadastral system. Therefore, the land administration system becomes key. The land administrative system refers to the process of recording and disseminating information about the ownership, value and use of land. Cadastre is another component that needs to be included as part of the land administration system, since expropriation of land affects ownership, land use, mortgaging, property value and investment. Cadastre is an information system that consists of a series of maps or plans showing the size and location of all parcels of land. Cadastre works within a legal system; hence the need to involve the Surveyor-General and the Registrar of Deeds (Dale & McLaren 2005:859-861; Li & Lahiff: 2012:3). Enemark (2009:2) mentions that the land administration system is useful in managing rights, restriction and responsibilities in land.

Land reform relies on good governance for sustainable development. The figure illustrates the significance of land administration.

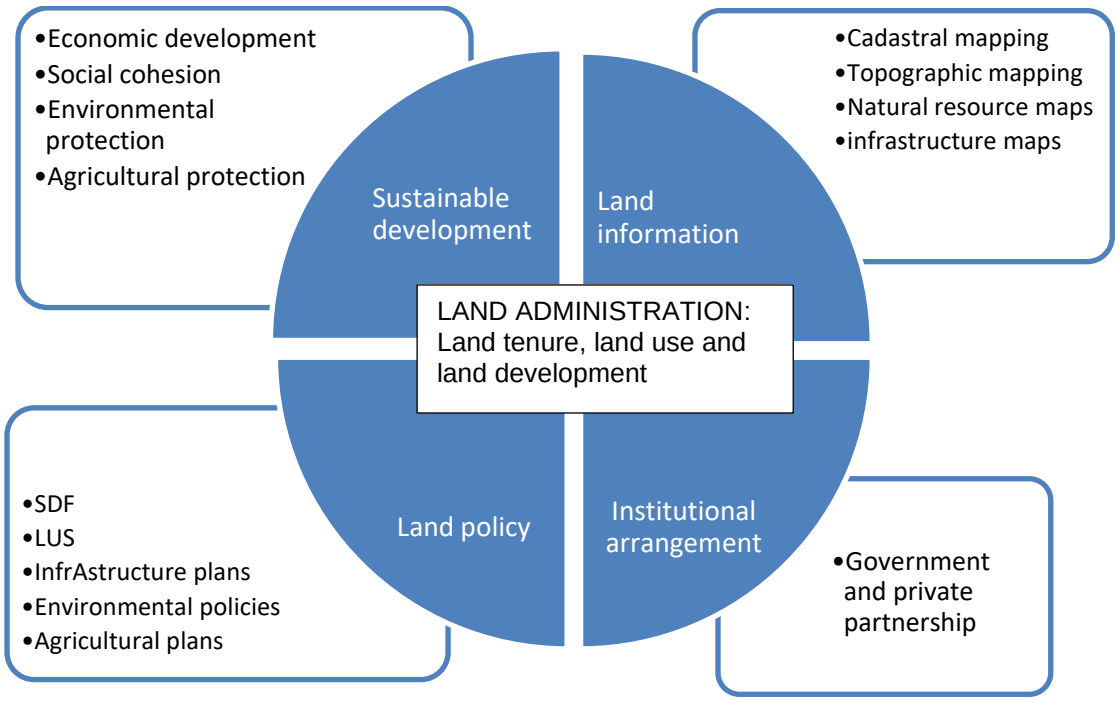


Figure 4.17: The land management paradigm

Source: Enemark (2009)

Figure and Figure indicated how a land administration system and land use management system can assist in coordinating and facilitating expropriation of land for redistribution purposes. Expropriation of land is an administrative process that must, without fail, form part of municipal planning. The land administration system and land use management system will ensure that land redistribution becomes beneficial to the citizens of the country, making the provision of the Freedom Charter as well of the Constitution realised.

4.5.3.2 Proposed approaches to facilitate a successful land reform part of municipal planning – views from participants

In order to propose informed approaches towards successful, officials from the three piloted municipalities were requested to share their views and possible approach to land reform as part of municipal planning. This section is dealt with in two ways: Views from the participants; and proposed approach to facilitate land reform as part of municipal planning.

4.5.3.2.1 Views from the participants

Reponses were received from two municipalities, namely City of Johannesburg and City of Ekurhuleni. The third pilot municipality, being City of Tshwane, did not participate. The SACPLAN representing urban and regional planners as well as the Advocate, Elmien du Plessis, accepted

the call to participate in this study. The following population formed part of this section by sharing their views on land reform, expropriation and municipal planning:

Participant name	Organisation
Manager-development planning	City of Johannesburg Municipality
Manager operations	City of Ekurhuleni Municipality
COE	SACPLAN
Prof Elmien du Plessis	Private practice

Participants from the municipalities and SACPLAN were asked the following four general questions:

- What is your understanding of land reform in the context of spatial planning and land use management?
- How can government achieve expropriation without compensation without undermining municipal planning?
- What should the role of planners be in contributing to the achievement of land reform and municipal planning?
- How can a Geographic Information System (GIS) be useful in land redistribution?

Manager from the City of Johannesburg indicated that land reform is consistent with the development principle provided for in SPLUMA, where it talks about spatial justice, giving people tenure surety and equal access to land as an economic base. Furthermore, municipalities must have and utilise GIS in order to capture and map out parcel of land that can be part of the redistribution process. Such parcels of land must be strategically located and considered high priority so that it can satisfy the interest of the public.

Manager from the City of Ekurhuleni shared his views, which were consistent with the views shared by the official from the City of Johannesburg, stating that land reform is the government initiative that seeks to right the wrong of the apartheid government where land was taken unjustly from people of South Africa. Current legislation has not been properly evaluated to deal holistically with issues of land reform, especially where expropriation is undertaken to ensure municipal strategies are properly realised to the benefit of the public. Strategically located land is largely owned by white individuals, who are seen as the minority group in the country. Municipalities were acquiring such strategic land by negotiating using market-related value with the owners; however, such has proven not to be working. For the IDP and other related SDF and infrastructure policies to be effective, land acquisition must be within the land redistribution realm.

The manager from City of Ekurhuleni also mentioned the importance of using GIS and information and communications technology, as land redistribution deals with land and property rights, thus land redistribution must be part of municipal planning as facilitated through a land use

management system in order to successfully achieve the strategic objective of government and serve the interest of the public.

Both officials from the City of Johannesburg and City of Ekurhuleni mentioned the importance of urban and regional planners in land reform and municipal planning. Urban and regional planners go beyond the advisory role; they can profile suitable land for redistribution looking at all applicable legislation, policies and frameworks. Furthermore, planners will be able to guide the development that can ensure that the transformative agenda of government is realised. Manager from City of Johannesburg further indicated that this work can be led by planners but it cannot take place outside the support from professions in the built environment and the legal fraternity.

SACPLAN Chief Executive Officer responded by saying that within the context of spatial planning and land use management, land reform should include the reinstatement of the use of land to either its original state, or to its potential. SDFs developed by municipalities should identify areas for future land use developments as well as areas for redevelopment. Land redistribution should follow planning. Thus, land reform should form an integral part of the planning process. Land reform should not be seen as an 'add-on'.

Having received the views from the above participants, it became crucial to seek the views of a person who has qualified in law and has written on land reform issues. Prof Elmien Du Plessis was approached in order share her opinion on the implication of land redistribution using expropriation as a vehicle to acquire land, given the current applicable legislation.

Agreeing with the researcher Prof Du Plessis mentioned that land redistribution as well as expropriation is an administrative action, so normal rules of administrative action are applicable. She explained that expropriation is set out in the Expropriation Act and the authority comes from the Constitution, thus the state can expropriate property for public purposes. Public purpose is contained in the Housing Act.

Prof Elmien Du Plessis stated that expropriation part of land distribution has implications to property rights and ownership as the owner will lose ownership on the date of notice of expropriation and the state will become the owner of the property, as result procedures as set out in legislation must be followed. The state must demonstrate the validity of the public purpose that it warrants expropriation of land. The state must then use the property for the use it was expropriated for.

Having received the views from the participants, in summary, it shows that land redistribution must:

- observe the constitutional provisions;

- take place as part of municipal planning;
- observe and be guided by the legislation and policies applicable to municipalities;
- must use GIS to deal with cadastral data and mapping;
- must consider strategic located land; and
- allow urban and regional planners to be central to the process.

From the views provided, as well as the literature review, the researcher proposes approaches that are deemed suitable to the effective land redistribution part of municipal planning.

4.5.3.2.2 Proposed approach to facilitate land reform as part of municipal planning

The researcher proposed that for a sustainable and orderly built environment, once land has been expropriated, all legislation and policies used for land development and land use management must be observed by government and associated beneficiaries. There should not be any unduly exemption of legislative compliance solely on the ground that land or property was expropriated. Adherence to legislation will give order, equity, spatial justice and sustainable development. Below are the ten approaches to facilitate land reform as part of municipal planning:

a. Alignment between legislation municipal planning and land reform

For a municipality to successfully deal with the intricacies of land redistribution, it must be in a position to make technical and administrative connection with legislation relevant to land reform. Legislation applicable to municipal planning illustrates the foundation of law reform and how municipal planning is facilitated. The tree indicates how municipal planning holds all aspects of land development together; at the same time land reform is the root system for all land transactions, thus land reform and municipal planning become central to the success of government in achieving its transformative goals.

Figure 4.18 provides a proposed alignment between municipal planning and land reform.

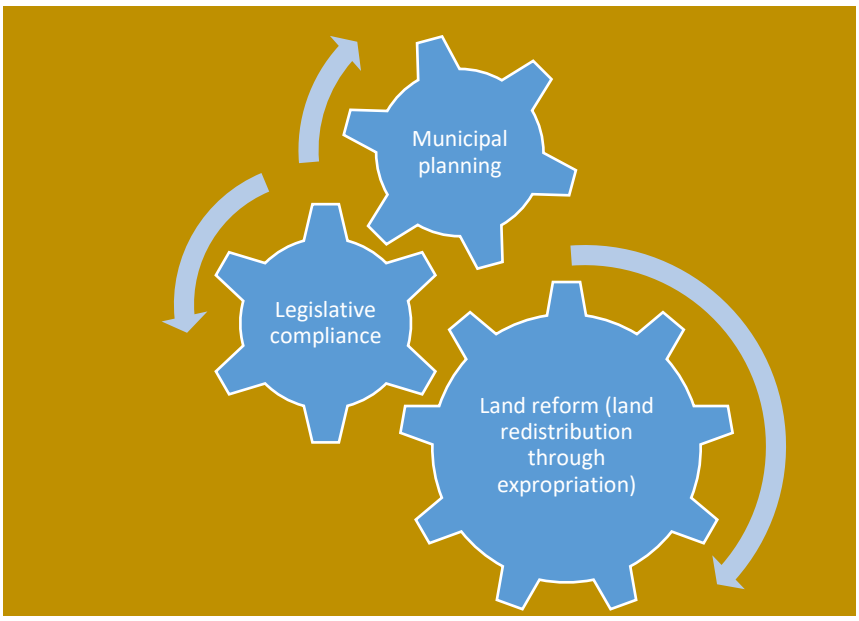


Figure 4.18: Proposed alignment between legislation municipal planning and land reform

Source: *Own construction (2019)*

b. Proclamation of land that is not proclaimed and management thereof

From a municipal point of view, the state can acquire land that is proclaimed and land that is not proclaimed. It is suggested that when a municipality decides to expropriate land that is not proclaimed, the municipality must ensure that the township establishment process is followed to proclaim the township.

c. Full ownership or Trust

The municipality must decide if the land will be given to beneficiaries with full ownership or will be held in trust:

- Where full ownership has been transferred to a beneficiary, ensure a title deed is given, indicating ownership. Such will enable the owner to produce the title deed when required.
- Where land is held in trust, give beneficiaries some form of authorisation to use and access land or property for economic gains or farming purposes.

The Authorisation to Use and Access Land will be used and recognised as a valid document when proof of ownership is required by any institution, including financial institutions. The Authorisation to Use and Access Land must be linked with the title deed number of the property or land in question so that it shows that the primary ownership lies with the municipality. The municipality may then stipulate the rule of engagement or conditions to

which the Authorisation to Use and Access Land can be used. These conditions are meant to protect the land or property to be used or sold unduly.

d. Land administration and profiling

When the land expropriated is proclaimed, the municipality must profile all its land determined ownership, size, location, current use, developmental potential based on environmental sensitivity guidelines and agricultural possibilities. The municipality must create what can be called a Land/Property Expropriation Portfolio for all the qualifying profiled land. An accurate Land/Property Expropriation Portfolio will require a land administration system as well as the land use management system. This means the municipality must use the SDF, land use scheme and other relevant infrastructure and environmental laws to determine the developmental capability of the land or property. The information must be captured in a GIS of the municipality as part of the land administration system. The land administration system must be plucked into the land use management system that is the engine of the municipality. The municipality must clearly categorise land accordingly. Land subject for expropriation must be categorised for:

- economic development;
- human habitation; and
- agricultural production.

Once land acquired through expropriation is part of municipal planning, such development transactions must be in accordance with processes and procedures as provided for by the land use scheme.

e. Allow technologies for environmental protection, water and energy saving

For the expropriation to become a success, land development and production thereof must consider appropriated technologies to be used to protect the environment from degradation. Furthermore, where expropriated land is to be used for agriculture production, such technologies must permit water and energy serving alternatives.

f. **Determine state of financial affairs on land subject to expropriation**

The municipality must further determine whether there are taxes or levies owned by the property or landowner and how much is owed. This may include investigating if the land or property is subject to a mortgage bond due to any financial institution. Du Plessis (2009:32) further states: “Upon expropriation of immovable property, the property is transferred subject to the rights that are registered in the land (except mortgage bonds).” This requires the municipality to observe the provisions of Section 8 of the Expropriation Act.

g. Notification of the Deeds Register

As part of the land use management system, it is required that once the expropriation has been concluded, the municipality as the expropriator, notifies the deeds office and registrar to ensure that a deed of transfer is registered in the Deeds Registry by the Registrar of Deeds. By so doing, the land or property expropriated will be part of municipal planning and is received or subjected to the planning system relevant to develop and manage the manner in which land is used.

h. Develop and manage a performance and monitoring system

The municipality must develop a performance and monitoring system that:

- measures performance of the land expropriated to determine if the intended outcome has been realised or not;
- quantifies the success of the use of land expropriated using economic indicators based of revenue generated over a period of time;
- determines level of employment created and level of poverty reduced over a period of time;
- determines innovations used to increase sustainable agriculture production for food security, income benefiting small-scale farmers; and
- assesses number of people with access to households with full title.

i. Development incentives

In order to accelerate tangible results on land that has been expropriated for economic purposes, the municipality must avail different development incentives that will facilitate, unlock and attract investment in line with the spatial, agricultural and economic trajectory of the municipality. This means that when every municipality applies the same processes, the expropriation process will have a compounding effect and yield positive results in accordance with the land reform objectives.

j. Formulate a coordination and reporting framework

The municipality needs to ensure that all stakeholders form part of the communication framework so that there is common understanding of legislative and administrative processes. This will strengthen the communication and adherence to municipal planning.

It is the submission of the researcher that once the above has been complied with, land expropriation will take place in a structured manner and such will affirm that land reform as

part of municipal planning is a correct and effective approach in dealing with land development, land production and tenure security.

Figure provides a land reform coordinating and reporting structure.

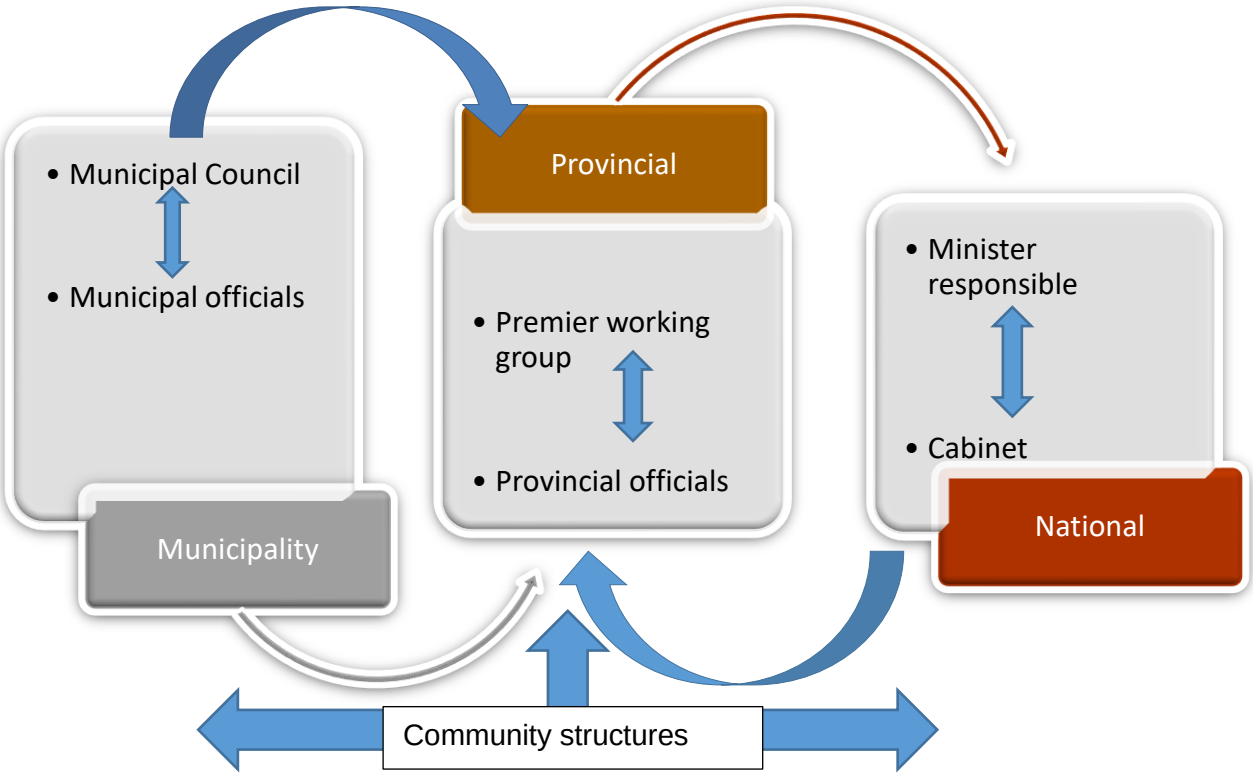


***Figure 4.19**: Land reform coordinating and reporting structure*
Source: Own construction (2019)

Legislative compliance plays an important role in the success of land reform; hence, land expropriation must be done in a manner that is just and for the purpose as intended. Land reform and municipal planning reflect the social relationship between people, land and associated rights. Land reform and municipal planning cannot be successful without competent urban and regional planners who can integrate the land use management system and land administration system to achieve effective and efficient land reform and municipal planning. Qualified urban and regional planners are required to ensure that there is a balance of scale between competing people's needs and legislative compliance in order to ensure spatial justice and tenure security, enabling service delivery, economic growth and job creation.

4.6 URBAN AND REGIONAL PLANNERS AS KEY FUNCTIONARIES FOR MUNICIPAL PLANNING

The study becomes incomplete if the profession and institutions that form part of the municipal planning are not mentioned, especially in light of service delivery, economic growth and job creation. Various court judgements on municipal planning matters placed municipal planning to

be a function amongst others to include processes, including rezoning and township establishment. In adjudicating rezoning and township establishment applications, space, economic, social, environment, and infrastructure development, demographics and agricultural aspects need to be understood by qualified urban and regional planners. Urban and regional planners are trained to consider multiple legislation when compiling laws, planning, designing, managing land uses or adjudicating development application. Furthermore, the nature of municipal planning requires urban and regional planners to understand different functions and laws used by various experts in the built environment in order to make informed decision on land development matters.

For the purpose of this study, urban and regional planning as a profession is seen as the only discipline that is not specialised in nature but takes all studies or work from various disciplines and try to make sense with the intention to provide coherent planning outcomes that can address and promote spatial justice, sustainability, integration and equity in spatial planning, land use management and land development.

The Consolidated Report on Competencies and Standards (SACPLAN, 2014) complements the above, stating that planning and the planning profession are areas of expertise which involve the initiation and management of change in the built and natural environment across a spectrum of areas, ranging from urban to rural and delineated at different geographic scales (region, sub-region, city, town, village, neighbourhood), in order to further human development and environmental sustainability in the following fields:

- The delimitation, regulation and management of land uses.
- The organisation of service infrastructure, utilities, facilities and housing for human settlements.
- The coordination and integration of social, economic and physical sectors which comprise human settlements.
- Promoting environmentally responsible planning which will ensure sustainable development.

The planning profession is linked with the history of apartheid planning whereby segregation was achieved through the profession and associated legislation. The planning profession exists to promote strategic and functional settlements that are integrated, inclusive, progressive, environmentally friendly, and resource (water, energy) efficient. By so doing, South Africa at large will have local communities that are self-sufficient, growing economy and will be globally competitive.

During the introduction of the Accelerated and Shared Growth Initiative for South Africa and the Joint Initiative on Scarce Skills, city/town planning was designated as a scarce skill. Lack of

planning capacity was seen as constraining development in two ways: through slow processing of land development applications, which was seen as holding up development; and through the lack of transformation of South African cities, perpetuating conditions such a long and costly travelling to work (Scarce and Critical Skills Research Project, 2008). Eight years later, town planning is listed by the Local Government Sector Education and Training Authority, as a scarce and critical skill but also falls within the pivotal list in the Scarce and Critical Skill Guide (2016). This means that planners have a bigger role to play in the development of the country.

4.6.1 Role of the South African Council for planners in the transformative agenda

The planning profession falls under the supervision of the South African Council for Planners (SACPLAN) regulated by the Planning Profession Act (PPA) (36 of 2002). The PPA aims to:

- provide for the establishment of SACPLAN as a juristic person;
- provide for different categories of planners and the registration of planners;
- authorise the identification of areas of work for planners;
- recognise certain voluntary associations;
- protect the public from unethical planning practices;
- maintain a high standard of professional conduct and integrity;
- establish disciplinary mechanisms and an Appeal Board; and
- provide for incidental matters.

According to the PPA, 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 as contemplated in section 2(a) and 10, which is registered in one or more of the categories contemplated in section 13(4); whereas the **planning profession** means the persons registered in terms of section 13(4) as candidate planners, technical planners or professional planners. According to Section 7 of the PPA, SACPLAN is the statutory body that exists to regulate the planning profession as to:

- promote and protect the interest of registered persons in terms of the PPA;
- institute and enforce disciplinary action against registered persons contravening the provision of the PPA;
- support the functioning of disciplinary and appeal structures established under the PPA; and
- ensure and promote a high standard of education and training in the sector.

The SACPLAN has been working in order transform the profession in order to remain relevant and responsive to the need of the professionals as well as the discipline. This is important to

focus spatial planning, land use management, land development, infrastructure provision in the country.

The subsequent table gives a summary of function performed by the SACPLAN in ensuring the relevance of the profession in the built environment.

Table 4.7: Core function performed by the SACPLAN

SOUTH AFRICAN COUNCIL FOR PLANNERS				
PLANNING PROSSION ACT 32 OF 2002- RULES AND CODE OF CONDUCT				
DEPARTMENT OF AGRICULTURE, RURAL DEVELOPMENT AND LAND REFORM				
CATEGORIES OF REGISTRATION	ACCREDITED PLANNING PROGRAMMES (2018)	ALIGNMENT OF COMPETENCY FOR PLANNERS	VOLUNTARY ASSOCIATION	AFFILIATIONS
Candidate planner	Cape Peninsula of Technology	Generic (essential skills) competencies	South African Association of consulting Professional Planners	Municipal Infrastructure Support agent
Technical Planner	Durban University of Technology	Core (specific knowledge) Competencies	Committee of Heads of Planning Schools	Council on Higher Education
Professional Planner	North-West University	Functional (basic skills) Competencies	South African Planning Institute	South African Qualifications Authority
	University of Cape town			South African Local Government Association
	University of the Free State			South African Property Owners Association
	University of Johannesburg			South African Cities Network

	University of KwaZulu Natal			
	University of Pretoria			
	University of Stellenbosch			
	University of Venda			
	University of the Witwatersrand			
POLICIES	CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD) Systematic maintenance, improvement and broadening of knowledge and skills, and the on-gong development of personal competencies and qualities and qualities necessary for the execution of professional and technical duties throughout a practitioner's working life.			
Legislation review	Amendment of the Planning Profession Act, 2002 in order to align with the Spatial Planning and Land Use Management Act and to deal with reservation of work exclusively for Technical and Professional planners			

Source: Own Construction (2019)

4.6.2 Availability of urban and regional planners in municipalities

Currently municipalities have appointed qualified urban and regional planners to deal with municipal planning processes. However, the required number of planners is not adequate to deal with the intricacies of municipal planning. Of concern is that not all of those appointed planners are registered with SACPLAN. The disadvantage of non-registered town planners is that the public is not protected from unscrupulous behaviour of town planners. Only a municipality through its internal labour processes can deal with maladministration but the same planner can still find another job and proceed with his/her bad behaviour if not part of SACPLAN.

4.6.3 Planners under the South African Council for Planners

There are two categories of town planners: planners working for the private sector and planners working for government in the three spheres of government. It is important to mention that the work stream as mentioned above has nothing to do with the training and qualifications obtained by individual planners. It is the preference of planners who have completed their studies to venture into private practice or serve under government. SACPLAN covers all planners irrespective of the work stream chosen by an individual planner.

The Chief Executive Officer of SACPLAN, mentioned during an interview held on 15 November 2016, that the number of unregistered planners is high. These planners have different reasons for not being registered with the Council. One of the reasons it that planners feel that little is done by SACPLAN to protect the profession and there is no effort to ensure that planners, once graduated, get employment and are protected from exploitation. SACPLAN do conduct workshops to educate planners about the PPA and the obligation it has to ensure that planners are registered.

Lewis in an interview conducted in 2016 mentioned that there is a painful history associated with the profession. Historically, the profession had been severely discredited and enjoyed little legitimacy, with no respect for both the technical and professional skills of planners. Increasingly, the state removed the requirement that officials in planning posts needed to have planning qualifications. As a result, it became better to secure a job if you were not a planner or planner without registration. This statement is supported by the findings on the Consolidated Report on Competencies and Standards as done by SACPLAN (2014).

From observation throughout the year, planners were not treated fairly and being deservedly recognised. SACPLAN was also dominated by whites and as such made it difficult for black planners to register with the Council. Within planning departments, planners who qualified from universities were recognised more than planners from universities of technology. This disparity was evident within the workplace, for example policy, and researchers were planners who graduated from the universities, while technical jobs such as town planning scheme enforcers and inspectors were largely done by planners who graduated from universities of technology. The salary supported the segregation creating more disgruntled planners. The Consolidated Report on Competencies and Standards (SACPLAN, 2014) mentions that the late Prof John Muller, a former chair of the South African Council of Town and Regional Planners, in his memoirs recorded how voices of planners opposed to the professions with the apartheid state were marginalised.

4.6.4 Implication of the non-registered planners

The implication of non-registration, according to Lewis interview in 2016, create an environment where there is no accountability and carelessness by planners when executing their duties. The integrity of the profession is strained as there are no means to ensure that all planners conduct themselves according to the code of conduct and they hold the profession and work associated at high esteem. When it comes to efficiency, planners working for the private sector and those working for government have a different understanding of efficiency. From the private sector, delays hit the bottom line which is revenue and income. On the other hand, from planners in government, delays translate to poor service delivery and minimum growth and development. Revenue and income generated in government is not the bottom line; service delivery is. Thus,

the measure of efficiency for planners in government and those in the private sector becomes different as a result of the difference in approach and technique in achieving goals.

On the 17 November 2016, Ms Nonceba Ngwenya a qualified town planner, mentioned during an interview that, notwithstanding the provision of Planning Profession Act, SACPLAN has not done enough in protecting the profession and ensure that planners have employment and protected from exploitation. Her statement is arguable as the profession require every planner to fully participate in all related activities. SACPLAN can do up to a certain degree, however more ground can be covered with collaborative effort and commitment from all planners. It is submitted that when planners talk with one voice, the profession will be protected as planning work will be done by qualified planners and the provision of the Planning profession Act will be achieved.

During the state of the Nation Address (2019), President Ramaphosa as part of the seven priorities, brought focused on:

- Economic transformation and job creation
- Education, skills and health
- Spatial integration, human settlement and local government
- Social cohesion and safe communities
- Building a capable, ethical and developmental state
- A better Africa and world

He further mentioned the priority reforms to improve the ease of doing business by consolidating and streamlining regulatory processes, automating permit and other applications, reducing the cost of compliance. The work requires that planners to take their rightful positions and perform the work they have trained for, put together their knowledge and capacity to ensure that South Africa becomes a capable state. Therefore, urban and regional planning remains a single profession designed to pull different developmental goals together to produce a consolidated outcome that can be implemented by various disciplines in accordance with their profession, training and capabilities.

4.6.5 Reservation of work

In 2008 government gazette in terms of the Planning Profession Act, 2002 published the Draft Rules for comments. The draft Rules amongst other aspects dealt with the reservation of work for planners. For the purpose of this study, the reservation of work is the subject for discussion. The rational is to reserve certain work exclusively for technical and professional profession in order to protect the public interest and to hold planners performing the work accountable. Where planners

perform the work in a manner contrary to the code of conduct, SACPLAN through the Regulation can initiate disciplinary measures.

However, the draft reservation of work was not received well by individuals in the Land Surveying profession stating that the reservation of certain work exclusively for technical and professional planners is a threat to the relevance and future of the land use surveying. On the other hand, the Geo-Information Society of South Africa (2016) took a decision to approve the job reservation for GIS professionals. It should be noted that jobs for Land Surveyors has been reserved in terms of Regulations promulgated in terms of section 10 of the Land Surveying Act, 1997. It's an indication that there is rational need for professions to be protected and preserve them to remain relevant.

It is the study's submission that reservation of work exclusively for planners remains important and needed. However, the reservation process must be done for the right reasons and be clearly defined urban as mentioned urban and regional planning is not a specialised field but it possesses technical and administrative intelligence to consolidate different fields or disciplines to yield defined development outcome.

A land development application for a township establishment, as an example, can be reserved exclusively for technical or professional planners. However, the completeness of the same application may require other professions such as engineers, land surveyors, environmentalist to contribute towards the correctness of the application. Therefore, different professions will have to play their roles and certify that the specific component done by them is correct and can stand legislation and administration scrutiny. Once such certification is done, the submission and the overall responsibility of that land development application must rest with the registered planner as the expert of first instance. Same principle will apply to policies such as spatial development framework, land use scheme and by law related to spatial planning and land use management, where other professions will contribute and certify correctness. Subdivision and consolidated land development applications can be of dual nature as land surveyor play a primary role.

In light of the above submission, reservation of work exclusively for technical and professional planner must be done part of the Regulation of the Planning profession Act so that, job reservation is not be done with malicious intent, but to protect the public interest and the integrity of the profession. Job reservation must be carefully done guided by a clear goal of achieving accountability, high standard of professionalism, competence and maintaining quality of produced work and decision making. Furthermore, it must be done to safeguard and reduce high level of unemployed qualified planners while planning work is done by other professionals not academically qualified in the profession.

Urban and regional planning remains central to achieve the developmental agenda set by government. This require Urban and Regional planners to have intellectual capacity to integrate different development initiative into a sing system that can yield 7 priorities as capture by the State of the Nation Address. Regulatory requirement remains a burden as legislative requirement and regulatory process that a single land development application must satisfy, are daunting, repetitive, confusing, and conflicting and at times result in unnecessary delays. Under the South African law, Wilhelm-Rechmann and Cowling (2013:2) note that though municipalities hold the primary decision-making powers on land use and development planning, such power relies heavily on various obligations for consultation and compliance with provincial and national legislation.

Section 30(1) of SPLUMA provides for alignment of authorisation and an integrated authorisation mechanism for an activity requiring multiple authorisation to be considered jointly by issuing integrated authorisation. However, the opportunity provided for in Section 30(1) has not yet been explored. There are no guidelines in place on how to integrate all required authorisation processes to avoid repetition of the same processes, required from the same population or undermining provision of any legislative requirements.

It became imperative that the three spheres of government assess individual legislation and determine activities that can permit integrated authorisation. Furthermore, national and provincial governments' need to undertake a legislative gap assessment in order to ensure that laws that are inconsistent with the provision of the Constitution and transformative agenda of government, are reformed. Reformation of laws will enhance a municipality's ability to perform its constitutional duties, namely service delivery, economic growth and land development. The lesson can be drawn from the work done during the Approximation of European Union Environmental Legislation in 1997 which has improved over the years.

The approximation process is aimed at ensuring the complete alignment of national environment legislation and the corresponding administrative system so that there is full compliance with the European Union Legislation. This requires assessment of legislative and administrative 'gaps' to ensure compliance with the European environmental laws and provide implementation considerations for each piece of legislation (Commission of the European Communities, 2015).

The next section looks into each metropolitan municipality to ascertain how land development and land use management processes have been impacted by the national and provincial legislation.

4.7 CASE STUDY: THE THREE GAUTENG METROPOLITAN MUNICIPALITIES

4.7.1 Introduction

The above sections dealt with legislation relevant to municipal planning; land reform (expropriation of land for land redistribution purposes) and service delivery issues. Powers and functions of each sphere of government as well as their role in municipal planning, land reform and service delivery were also extensively discussed. It should be highlighted that the City of Johannesburg, City of Tshwane and City of Ekurhuleni were never actively participated in land reform especially where land is appropriated for public purposes other than road widening. Land reform has always been the role and responsibility of the national or provincial government.

However, with the pronouncement of government to expropriate and for public purposes, land redistribution as a pillar to land reform has been proven in this study that it should take place as part of municipal planning, this means national and provincial legislation and strategies must provide that municipalities are the central sphere to land reform. Therefore, the case study did not focus on land reform, but rather on municipal planning looking at a land use management system applicable to the three piloted municipalities. The findings in Chapter 6 will be prudent in indicating the state of readiness for a municipality to deal with land redistribution.

Chapter 4 has provided how municipal planning is regulated and how each land development application can be subjected to multiple legislative requirements as well as associated time frames. The case study is provided to practically demonstrate how the three pilot municipalities deal with municipal planning processes and the implications thereof. Thus, the understanding needs to be drawn from the planning system applicable in the three metropolitan municipalities found in Gauteng Province, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities.

Gauteng is one of the nine provinces in South Africa as per the restructuring of the provincial sphere of government. It is the largest province, housing about 12.9 million people (23.9% of the total population). It is a diverse province comprising African, coloured, Indian/Asian and white people (Statistics South Africa, 2014:2).

4.7.2 Overview of the three metropolitan municipalities in Gauteng and their planning systems

Table captures an overview of each metropolitan municipality and illustrates the characteristics (geographic area demographics, economic growth, infrastructure capacity); and planning system applicable (pre- and post-SPLUMA) of each municipality. Table 9 is an analysis of the pre- and post-SPLUMA planning system.

Table 4.8: Overview of the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities

STATISTICS	CITY OF JOHANNESBURG	CITY OF TSHWANE	CITY OF EKURHULENI
Strategy mission	The City of Johannesburg commits itself to pro-active delivery and the creation of a city environment in 2040 that is resilient, sustainable and liveable. It aims to achieve this through long-term 2040 plans, targeted programmes, services and enabling support that drives economic growth, optimal management of natural resources and the environment, the development of society and the individuals within it, and the practice and encouragement of sound governance, in everything the City does.		Ekurhuleni provides sustainable and people-centred development services that are affordable, appropriate and of high quality. Ekurhuleni is focused on social, environmental and economic regeneration of the city and communities, as guided by the principles of Batho Pele and through the commitment of a motivated and dedicated team.
Priority implementation plan	Financial sustainability and resilience. Agriculture and food security. Sustainable human settlements. SMME and entrepreneurial support. Engaged active citizenry. Resource sustainability. Smart city. Investment attraction, retention and expansion; Green economy. Safer cities.	A resilient and resource efficient city. A growing economy that is inclusive, diversified and competitive. A city with quality infrastructure development that supports liveable communities. An equitable city that supports happiness, social cohesion, safety and healthy citizens. An African capital city that promotes excellence and innovative governance solutions. South Africa's capital with an activist citizenry that is engaging, aware of their rights and presents themselves as partners in tackling societal challenges.	Improved quality of basic education. A long and healthy life for all South Africans. All people in South Africa are and feel safe. Decent employment through inclusive economic growth. A skilled and capable workforce to support an inclusive growth path. An efficient, competitive and responsive economic and infrastructure network. Vibrant, equitable and sustainable rural communities with food security for all. Sustainable human settlements and improved quality of household life. A responsive, accountable, effective and efficient local government system. Environmental assets and natural resources that is well protected and continually enhanced. Create a better South Africa and contribute to a better and safer Africa and World. An efficient, effective and development-oriented public service and an empowered, fair and inclusive citizenship.
Geographical area/extent	1 645 km	6 345 km	1 924 km

STATISTICS	CITY OF JOHANNESBURG	CITY OF TSHWANE	CITY OF EKURHULENI
Demographics	Home for 4.4 million people.	Home for 3.1 million people.	Home for 3.2 million.
Economic growth	The commercial and economic hub of South Africa. The largest economy in the country contributing about 17% of the national gross domestic product and approximately 47% of the Gauteng economy. The economy is driven by the four economic sectors: finance and business; community services; manufacturing; and trade. Collectively they contribute about 82% of economic activity within the city.	It is the national capital of the RSA, with the diplomatic mission located in the city. The economic drivers are farming, mining and fishing that have grown to 1.6% in 2013; manufacturing grown to 9.5% in 2013 and banking grown to 11.4% in 2013.	It is an industrial hub contributing 6.1% to the national gross domestic product, with an economic growth of 3.2% per annum.
Infrastructure provision	**Water**: 95% of water sources in the City are operated by the municipality. 96.7% of the population has access to piped water within a distance of less than 200 m from dwelling.	89% of the population has piped water inside the yard and 7.4% access water through communal standpipes.	
	Sanitation: Access to sanitation is at 94.6%.	Access to sanitation is at 79.4%.	
	Electricity: 90.8% have access to electricity; 0.2% to solar usage.	88.6% have access to electricity.	
	Transportation: Middle-income people are much car oriented. There are motorised and non-motorised systems operational. Bus rapid transit system and Gautrain high rail link are operative to alleviate traffic congestion.	Middle-income people are much car oriented. There are motorised and non-motorised systems operational. The Re- Yeng rapid transit system and Gautrain high rail link are operative to alleviate traffic congestion.	It is the transportation hub of the country. It has the biggest airport and rail network. Middle-income people are much car oriented. There are motorised and non-motorised systems operational. Bus rapid transit is under construction and Gautrain high rail link is operative to alleviate traffic congestion
PLANNING SYSTEM PRE-SPLUMA			
Land use management system (land use management system)	The components of the land use management system as mentioned in section 2.4.1 are employed.	The components of the land use management system as mentioned in section 2.4.1 are employed.	The components of the land use management system as mentioned in section 2.4.1 are employed.

STATISTICS	CITY OF JOHANNESBURG	CITY OF TSHWANE	CITY OF EKURHULENI
	Governed, using 14 town planning schemes as inherited from the previous local council before the amalgamation of different local councils into a metropolitan municipality.	Governed, using six town planning schemes as inherited from the previous local council before the amalgamation of different local councils into a metropolitan municipality.	Governed, using 19 town planning schemes as inherited from the previous local council before the amalgamation of different local councils into a metropolitan municipality.
	In 2011, a single land use scheme was passed, replacing the multiple land use schemes.	In 2014, a single land use scheme was passed, replacing the multiple land use schemes.	In 2014, a single land use scheme was passed, replacing the multiple land use schemes.
Spatial Planning, Land Development and Land Use Management By-law	None	None	None
ADJUDICATION MODEL OF LAND DEVELOPMENT APPLICATIONS			
Authority to approve the development application without objections	**Delegation:** **Municipal official:** Operational manager – all types of applications other than township establishment. Assistant director – all applications including the township establishment application	**Delegation:** **Municipal official:** Operational manager and assistant director deal with all types of land development applications, including negative comments from councillors. Committee made up of councillors deal with applications from the municipality as the applicant.	**Delegation:** **Municipal official and Mayoral Committee: -** Area manager (consent use-related applications), head of department (rezoning and township establishment application) and mayoral committee (application with negative comments from ward councillors, also falling outside or contrary to the municipal SDF and/or subsidiary policies).
Tribunal model	**Delegation: Planning Committee** **Authority:** Under Sections 59–65 of the Municipal Systems Act read together with Section 79, read together with Section 32 and 80 of the Municipal Structures Act. **Terms of reference:** Delegated to consider all land development applications with objections and take a decision thereto (approval or refusal). **Composition:** Municipal officials from various departments only. Reference: Assistant Director, Municipal Official (telephonic conversation).	**Delegation: City Planning Development Committee** **Authority:** Under Section 59–65 of the Municipal Systems Act, read together with Section 79, read together with Section 32 and 80 of the Municipal Structures Act. **Terms of reference:** Delegated to consider all land development applications with objections and take a decision thereto (approval or refusal). **Composition:** Municipal officials from various departments only. Reference: Deputy director, Municipal official (interview).	**Delegation: Development Tribunal Committee** **Authority**: Under Section 59–65 of the Municipal Systems Act, read together with Section 79, read together with Section 32 and 80 of the Municipal Structures Act. **Terms of reference:** Delegated to consider all land development applications with objections and take a decision thereto (approval or refusal). **Composition:** Six councillors; Four members of non-governmental organisations. Reference: Schedule 2 – Systems of delegations: Powers to section 79, Development Tribunal (2011)

STATISTICS	CITY OF JOHANNESBURG	CITY OF TSHWANE	CITY OF EKURHULENI
Appeals authority	**Gauteng Townships Board (provincial sphere of government)** **Authority:** Gauteng Town Planning and Township Ordinance, 1986. **Terms of Reference**: To consider and decide on all land development applications with appeals.	**Gauteng Townships Board (Provincial Sphere of Government)** **Authority:** Gauteng Town Planning and Township Ordinance, 1986. **Terms of Reference**: To consider and decide on all land development applications with appeals.	**Gauteng Townships Board (Provincial Sphere of Government)** **Authority:** Gauteng Town Planning and Township Ordinance, 1986. **Terms of Reference**: To consider and decide on all land development applications with appeals.
Advantages			
PLANNING SYSTEM POST-SPLUMA (land use management system)			
Authority of municipalities with regard to municipal planning – section 33, read with section 2(2) of SPLUMA.	All land development applications are to be submitted to the municipality as the authority of first instance.	All land development applications are to be submitted to the municipality as the authority of first instance.	All land development applications are to be submitted to the municipality as the authority of first instance.
	Except as provided for in this Act, no legislation not repealed by this Act, may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use management and land development in a manner inconsistent with the provision of this Act.	Except as provided for in this Act, no legislation not repealed by this Act, may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use management and land development in a manner inconsistent with the provision of this Act.	Except as provided for in this Act, no legislation not repealed by this Act, may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use management and land development in a manner inconsistent with the provision of this Act.
SPLUMA By-law	Draft SPLUMA By-law	Adopted SPLUMA By-law and operational.	Draft SPLUMA By-law.
Land Use Management System	The components of the land use management system as mentioned in section 2.4.1 are to be fully employed as per SPLUMA requirements.	The components of the land use management system as mentioned in section 2.4.1 are to be fully employed as per SPLUMA requirements.	The components of the land use management system as mentioned in section 2.4.1 are to be fully employed as per SPLUMA requirements.
Spatial Development Framework	The legal status of the SDF has been elevated in terms of SPLUMA and the municipal SDF is compliant with SPLUMA.	The legal status of the SDF has been elevated in terms of SPLUMA and the municipal SDF is compliant with SPLUMA	The legal status of the SDF has been elevated in terms of SPLUMA and the municipal SDF is compliant with SPLUMA
Land Use Scheme	Single land use scheme instead of multiple schemes does exist; however, the land use scheme is not in terms of SPLUMA as the legislative authority and not completely inclusive as per SPLUMA provisions. Municipalities have until 2018 to revise their land use scheme to be SPLUMA compliant.	Single land use scheme instead of multiple schemes does exist; however, the land use scheme is not in terms of SPLUMA as the legislative authority and not completely inclusive as per SPLUMA provisions. Municipalities have until 2019 to revise their land uses scheme to be SPLUMA compliant.	Single land use scheme instead of multiple schemes does exist; however, the land use scheme is not in terms of SPLUMA as the legislative authority and not completely inclusive as per SPLUMA provisions. Municipalities have until 2019 to revise their land use scheme to be SPLUMA compliant.
ADJUDICATION AUTHORITY, SECTION 35, READ TOGETHER WITH SECTIONS 51 AND 56 OF SPLUMA			

STATISTICS	CITY OF JOHANNESBURG	CITY OF TSHWANE	CITY OF EKURHULENI
Authorised official	Individual managers per allocated area, and acting as authorised officials, determine and decide on land development applications.	An advisory committee comprising of deputy directors and acting as authorised officials, determines and decides on land development applications.	Head of department and area managers as delegated by the divisional head and acting as authorised officials, determine and decide on land development applications.
Tribunal model	**Municipal Planning Tribunal** **Authority:** Section 35 of SPLUMA, read together with **Terms of reference**: To determine and decide on land development applications, with objections. **Composition:** Municipal officials, national, provincial and	**City Planning and Development Committee** **Authority:** Section 35 of SPLUMA, read together with SPLUMA By-law (2015) **Terms of reference**: To determine and decide on land development applications, with objections. **Composition:** Municipal, national officials and private individuals. Municipal officials, provincial, national government official and private consultant only.	**Ekurhuleni Municipal Planning Tribunal** **Authority:** Section 35 of SPLUMA, read together with Council Resolution A-CPED (05-2015) **Terms of reference**: To determine and decide on land development applications, with objections. **Composition:** Non-governmental organisations, professionals and municipal officials, provincial government officials and independent experts.
Appeals authority	**Name**: City of Johannesburg	**Name:** Tshwane Appeals Committee – Strategic Land Development Tribunal **Authority:** Section 51, read together with Section 56 of SPLUMA (2013). **Composition:** Nominated councillors.	**Name:** Ekurhuleni Municipal Appeals Authority **Authority:** Section 51 read together with Section 56 of SPLUMA (2013). **Composition:** Nominated councillors, independent experts, and provincial government officials.
Analysis			

***Sources**: City of Johannesburg IDP (2016); City of Tshwane IDP (2016); City of Ekurhuleni IDP (2016); City of Tshwane Town Planning Scheme and By-law (2016); City of Ekurhuleni Town Planning Scheme (2014); City of Johannesburg Town Planning Scheme (2013) and SPLUMA (2013)*

Table 4.9: Pre- and post-planning system of the three metropolitan municipalities

JOHANNESBURG, TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITIES				
Planning system (land use management system)	**Pre-SPLUMA**		**Post-SPLUMA**	
Performance area	**Disadvantages**	**Advantages**	**Disadvantages**	**Advantages**
Authority of the municipality	Municipality never had sole powers on matters dealing with municipal planning. National and provincial spheres dealt with municipal planning matters.			Municipalities are recognised as the authority of first instance in terms of SPLUMA and a number of court judgements clarified that municipal planning is the competency of municipalities.
Spatial Development Framework	The SDF was treated as mere guidelines, lacked an implementation plan and strategic focus. The SDF was mentioned and treated as an IDP component, as mentioned in the Municipal Systems Act. The SDF was easily disputed by developers as subsidiary and not bidding. It has no correlation with the land use scheme.	The introduction of SDF, regardless of their status, started to deal with issues of urban sprawl, environmental degradation and, to a large degree, dealt with inefficiency and sustainability.		The SDF was elevated and given a long-term strategic status that a municipality should adopt and follow. The SDF is no longer a mere IDP component as mentioned in the Municipal Systems Act. It has a strong correlation with the land use scheme.
Land use scheme	Multiple land use schemes. Areas not formally proclaimed are excluded from the scheme. Some areas were not covered by the town planning scheme.	Gives developmental rights to properties.		Gives effect to the SDF provisions. Single land use scheme covering the entire municipality. Formal and informal settlement to be part of the land use scheme. No use or area should be outside the municipal planning processes. Promote the principle of inclusion and equity. Provide time frames for the revision of the land use scheme.

Tribunal	The municipality had limited control on tribunal matters as some land development applications were dealt with by either the province or national sphere. Municipalities will then assume the commenting role as an affected party.			Tribunal is given a direct role and authority. All applications will be heard by the municipality. The municipality will never swop roles in any land development application as now the municipality has the sole sphere to deal with determining and deciding on land development applications.
Appeals	Appeals were heard at province and the municipality became the respondent, justifying the decisions taken by the municipal tribunal. The appeals authority (township board) was never bound by the municipal policies as decisions contrary to the policy were often taken to favour a particular development. As a result, the growth and the settlement patterns of the municipality deviated from the vision and goals of the approved policies. Such decisions became costly and regressive towards what the municipality wanted to achieve.	The township board was seen as fair mediator due to the fact that it resided in the province.		The municipality has been given the authority to choose the appeals authority with an understanding that the body will be fair. (Fairness and partiality do not lie in the institution located, but in the person holding the power to understand and adhere to the code of conduct and oath of office and the power entrusted with.) Appeals are to be mindful of Council approved policies and intention of the vision and objective of such policies.

Source: Own compilation (2019)

4.7.3 Dealing with efficiency on land development applications (pre- and post-SPLUMA)

The type of land development applications and general time frames were discussed, which dealt with the land development and land use management process. Specific time frames and role players in a land development application were expressed by providing a land development application process scenario for a land development application for a filling station.

For the purpose of this subsection a 'filling station' will be used as a proposed land use in a property zoned 'agriculture' in terms of the land use scheme. Table indicates possible role players in ensuring that the proposed use is approved by the municipality. Even though a land development application is submitted to a municipality, the process leading to the granting of the developmental rights for a filling station does not fall solely on the municipality but also involves other stakeholders. Table indicates activities and responsible persons towards a land development application.

Table 4.10: Land development process plan

Action required	Responsible person	Applicable legislation	Time frames	Studies required and time frames
Compile and submit the land development application	Applicant/owner of a property	Gauteng Town Planning and Township Ordinance,1986	–	
Advertise in the newspapers			28 days	Objection received
Place a site notice			28 days	Objection received
Consultation with national and provincial sector departments (internal and external department)			60 days	Traffic impact study required Water use license required Environmental impact study required
Notification of the applicant about the objection received	Municipality			14 days
Responding to the objection	The applicant/owner			14 days
Writing a report with recommendation for tribunal purposes	Municipality			1 day
Setting the date and notifying affected role players about the tribunal				30 days

Source: Own compilation (2019)

Table 4.11: Time frames associated to the determining and deciding on land development applications

LAND DEVELOPMENT APPLICATION ADJUDICATION TIME FRAME PRE-SPLUMA						
CITY OF JOHANNESBURG		**CITY OF TSHWANE**		**CITY OF EKURHULENI**		
Deputy directors/ managers	**Tribunal**	**Deputy directors**	**Tribunal**	**Head of Department**	**Mayoral Committee**	**Tribunal**
Development applications may be concluded between two and five months	From one to two months due to tribunal logistics, including 14 days to inform the participants about the hearing dates	Development applications may be concluded between two and five months	From one to two months due to tribunal logistics, including 14 days to inform the participants about the hearing dates	From one to five months	Between 7 and 18 months to take a decision due to multiple committees that must deliberate on an application before final decision by the mayoral committee	From one to two months due to tribunal logistics, including 14 days to inform the participants about the hearing date

Source: Own compilation (2019)

4.7.4 Land reform function in the three piloted municipalities

In line with the proposed approaches to facilitate a successful land reform as part of municipal planning, municipalities must determine their ability to undertake land expropriation for the purpose of land redistribution. Table indicates the state of readiness for the three case study municipalities.

Table 4.12: State of Readiness

LAND REFORM AS PART OF MUNICIPAL PLANNING			
Case study municipality	**City of Johannesburg**	**City of Tshwane**	**City of Ekurhuleni**
Land reform function	Not currently applicable	Not currently applicable	Not currently applicable
Department responsible for land reform	No dedicated department or section specifically dealing with land reform	No dedicated department or section specifically dealing with land reform	No dedicated department or section specifically dealing with land reform
Readiness to undertake land reform	Municipality is competent and can be ready to deal with land reform as part of municipal planning	Municipality is competent and can be ready to deal with land reform as part of municipal planning	Municipality is competent and can be ready to deal with land reform as part of municipal planning

Case study municipality	City of Johannesburg	City of Tshwane	City of Ekurhuleni
Capacity of the municipality to perform land reform related activities	The municipality may require support from national and provincial government to ensure the department or section to deal with land reform is capacitated accordingly	The municipality may require support from national and provincial government to ensure the department or section to deal with land reform is capacitated accordingly	The municipality may require support from national and provincial government to ensure the department or section to deal with land reform is capacitated accordingly
Financial capacity to fund expropriation and land redistribution	Current budget does not include land reform Municipality must include land reform, especially the cost associated with expropriation and land redistribution into their budget National government may have to review their division of revenue to ensure efficient implementation	Current budget does not include land reform Municipality must include land reform, especially the cost associated with expropriation and land redistribution into their budget National government may have to review their division of revenue to ensure efficient implementation	Current budget does not include land reform Municipality must include land reform, especially the cost associated with expropriation and land redistribution into their budget National government may have to review their division of revenue to ensure efficient implementation

Source: Own construction (2019)

4.8 CONCLUSION

Municipal planning as a constitutional mandated municipal function appears to be the key not only for service delivery but also for land reform desired outcomes. It is beyond doubt that municipal planning is highly regulated and requires functionaries that have the necessary qualifications and relevant experience to executive all tasks associated with municipal planning. Furthermore, this chapter showed that land tenure security relies on a solid land administration system where land rights will be captured. Pienaar (2013:26) states that Information on the limitation of the rights by group members, or the administrative system in which the rights are exercised, must be recorded.

Coordination and alignment of spatial, land use and sectorial policies of the three spheres of government play a crucial part in providing for realistic strategies that can be utilised throughout municipal planning and budgeting processes. Municipal planning and budgeting should be seen as an interrelated function essential to service delivery. Service delivery is not complete if land reform issues are not resolved, whereby land still belongs to the minority white population while the majority black population is left without land tenure security, exposing to the number of deprivation traps such as poverty, and poor access to economic and social commodities.

The need for law reform came as another priority, indicating the need to review the relevance of pieces of legislation regulating municipal planning and land reform to ensure there are no

ambiguities and inconsistences of provisions and duplication of processes. Furthermore, there is a clear indication that land redistribution is possible and necessary to take place as part of municipal planning that as such will provide structured and realistic outcomes, enabling government to meet its objective of addressing the legacy of apartheid. However, the provincial and national sphere of government must play a monitoring and supporting role, ensuring that municipalities are capacitated and equipped to perform their developmental duties without any interference. The next chapter deals with the methodology that shaped the study and give detail on the research design undertaken and literature review pertinent to the study.

CHAPTER 5: RESEARCH DESIGN AND METHODOLOGY

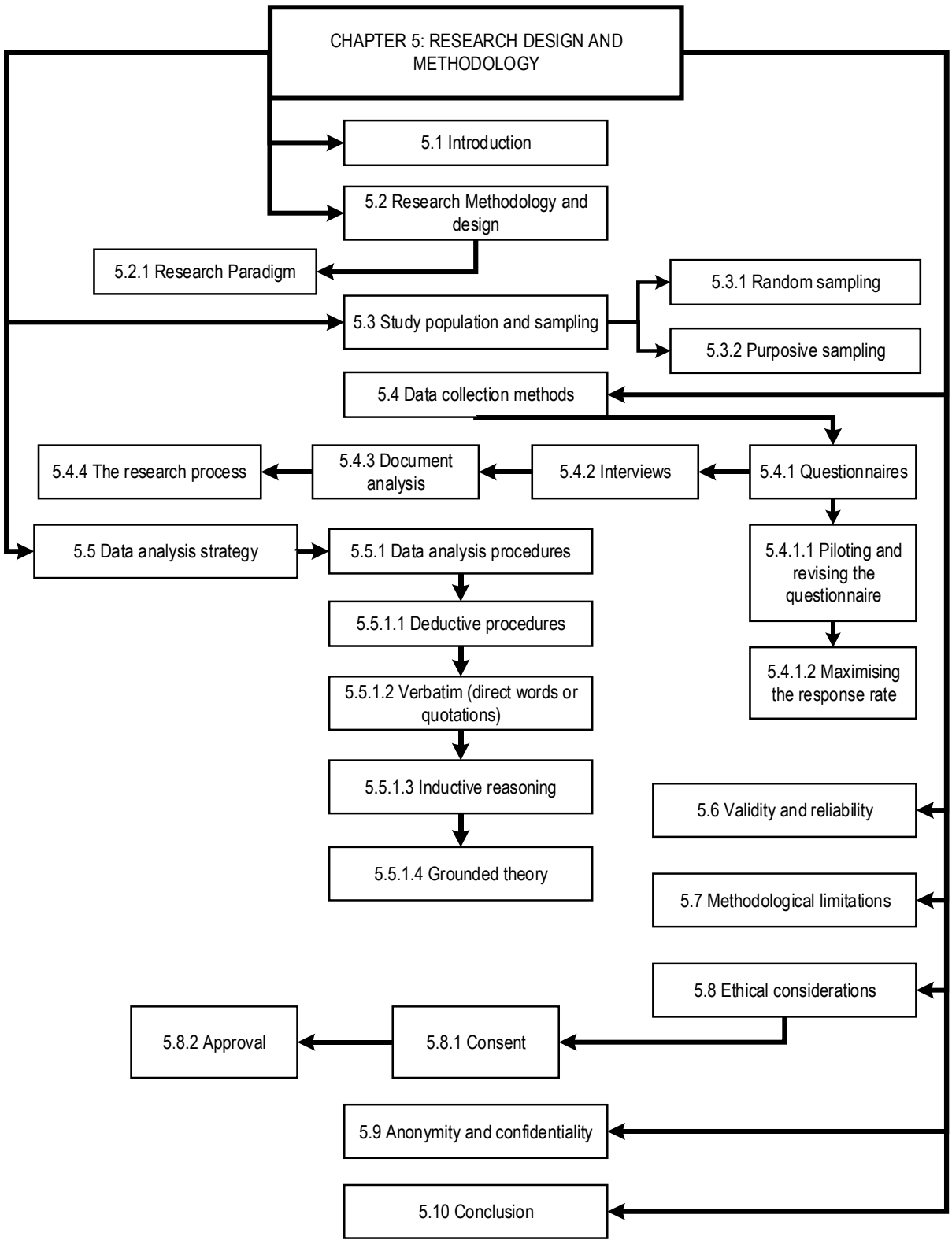


Figure 5.1: Structure of Chapter 5

Source: Own construction

5.1 INTRODUCTION

Following the literature study, the attention is now focused on the methodological aspects of the study. To reiterate, the study sought to investigate the inconsistencies between national, provincial and municipal legislation and how these have an impact on planning and service delivery in three Gauteng metropolitan municipalities, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni. Key methodological considerations in this discussion include the definition of research, research design, paradigm, methodology, sampling strategy, data collection instruments, data analysis strategy, validity and reliability, methodological limitations and research ethics.

5.2 RESEARCH METHODOLOGY AND DESIGN

A methodology refers to the plan and procedures that span the decisions from broad fundamental assumptions of research (Creswell, 2009:3&5 and 2016:3). It is the framework that relates to the entire process of research. As a methodology, it involves intersection of philosophical assumptions that guide the direction of the collection and analysis of data and the qualitative approach in many phases in the research process. (Leedy & Ormrod, 2005:2) regard research as a process of collecting, analysing, and interpreting information in order to increase the understanding of the phenomenon about which the interest lies. Research design as a plan for the study, providing the overall framework for collecting the data in detailed steps in the study, as well as guidelines for systematic data gathering. It is the plan that will be applied during the investigation in order to answer the research questions and aims to ensure that answers to questions are accurate.

Similarly, Mouton (1991:55) sees research design as a set of guidelines and instructions to be followed in addressing the research problem. The aim of the research design is to plan and structure a given research project in such a manner that the eventual validity of the research findings is maximised (Mouton, 1996:107). Kevilu (2003:249) mentions that central to any successful research endeavour is the planning of the research process in such a way that the key phases of the research are clearly defined.

Qualitative research deals with the human experience and is based on analysis of words rather than numbers. It seeks to explore rich information, usually collected from fairly small samples, and includes methods such as in-depth interviews, focus groups, action research and ethnographic studies (Fox *et al.*, 2009:38). In addition, the quality of data collected in an interview will depend on both the interview design and on the skills of the interviewer. Dawson (2009) further

contributes by defining Qualitative research as a process that explores attitude, behaviour and experiences though mixed methods such as interviews.

Qualitative method can be used to obtain the intricate details about phenomena such as feelings, thought processes, and emotions that are difficult to extract or learn about through more conventional research methods (Corbin & Strauss, 1998:11). For this study, the qualitative method was used to determine the tensions between national, provincial and municipal laws and how this impact planning and service delivery at local government level. For primary data, interviews were used and interview questions sent via email to those who were not available to attend the oral interviews. Secondary data included books, reports, articles, journals and other published documents. The qualitative method was seen as a desirable method to allow participants to express themselves freely and not being restricted by leading questions or multiple-choice types of questions. Participants had to be able to share their experiences in implementing legislation, sharing how service delivery initiatives have been impacted upon and proposing ways of resolving deficiencies, where applicable.

5.2.1 Research paradigm

Tashakkori and Teddlie (2003:52&81 and 2010:15&85) identified pragmatism as one of the paradigms that provide an underlying philosophical framework for mixed methods research and should be seen as set of philosophical tools that can be used to address problems. Pragmatism allows the researchers to choose the methods, or a combination of methods, that work best for answering their research questions (Johnson & Onwuegbuzie, 2004:17-18). It focuses on effectiveness rather than predetermined research rules. Effectiveness is viewed as establishing that the results 'work' with respect to the specific problem for which the researcher seeks a resolution.

What is healthy about pragmatic social science of mixed and multiple methods is that it allows a number of projects to be undertaken without the need to identify invariant prior knowledge, laws, or rules (Mertens *et al.,* 2010:193). For example, this study is interested in determining the inconsistencies in national, provincial and municipal legislation and recommending possible ways to alleviate these tensions so that municipalities may be able to perform their constitutional mandates that are effective and efficient service delivery to citizens.

5.3 STUDY POPULATION AND SAMPLING

As defined by Mouton (1996:135), the research population is the sum total of all the cases that need to be studied. It is the collection of objects, events or individuals having some common

characteristics that the researcher is interested in studying. Sampling is the process through which selection of upset of a population for inclusion in the study (Daniel, 2012:1). Similarly, Trochim (2002:20) define sampling as the process of selecting units, for example, people and organisations, from a population of interest so that by studying the sample, one may fairly generalise the results back to the population from which they were chosen. Denscombe, M. (2012:30, 47, 95) emphasises the fact that the researcher should be clear about the research population. In other words, the people or things to be included in the research need to be identified with a good degree of precision to minimise room for any ambiguity that may arise.

Based on the preceding definitions, this research utilised both probability and non-probability sampling methods, namely random sampling and purposive sampling. In non-probability sampling, the investigator does not base a sample selection on probability theory. Efforts are undertaken to create a kind of quasi-random sampling, and to have an idea on what bigger groups the sample may reflect. Non-probability samples offer the benefit of not requiring a list of all possible elements in a full population, and the ability to access otherwise highly sensitive or difficult to research study populations (Bogopane, 2013:226).

Babbie (2014:203) and Neuman (2011:244) view probability sampling as more accurate and easier to understand; hence, the term ‘gold standards. It uses probability theory and puts high emphasis on the representatives of the research sample, which allows the researcher to generalise the results to the research population. Fox *et al.* (1998:3) mention that in order to reduce and focus the number of objects or population in without biasing the findings, random sampling methods should be used. A brief discussion of the random sampling as applied to this study is discussed below.

5.3.1 Random sampling

Random sampling was used to construct the required sample, which consisted of:

- 35 respondents from the South African Property Owners Association (SAPOA);
- 35 respondents from the South African Ratepayers Association; and
- 30 respondents from individual planning professionals working as consultants.

The municipal database for all three metropolitan municipalities was used for the random sampling, namely:

- Emails were sent to the town planner at SAPOA as a link between the developers and government. A meeting was arranged with the members of SAPOA and subsequently, questions were sent to the participants. SAPOA participated in a meeting setup where they indicated that most of the responses could be found in a research document that was

published in 2016. Since they believed in those research findings, the researcher was advised to use such information to support responses from SAPOA.

- The South African Ratepayers Association was requested to participate via email and phone calls, but none of the selected members showed interest in participating in the study.
- The town planning consultants were also chosen from the database and emails sent requesting them to participate in the study. Most consultants responded positively and participated in the study.

Details of this sample are given in Table . According to Babbie (2014:205,207), random sampling is a probability sampling method that allows subjects to be selected in a fairly objective manner, thus ensuring that every case in the study population has an equal chance of being selected.

Table 5.1: Random sample

Organisation	Category of respondents	Number of respondents	Total
South African Property Owners Association	Leadership/management Ordinary members	5 30	35
South African Ratepayers Association	Leadership/management Ordinary members	5 30	35
Town planning consultants	Ordinary members	30	30
Total			100

Source: Own construction (2019)

As shown in Table , the respondents for the survey were drawn from three categories using a probability sampling method called random sampling, where every case has an equal chance of being selected (Babbie, 2014:207; Neuman, 2011:254). For example, in each organisation, five managers and 30 ordinary members were selected, resulting in a combined total of 100 respondents. In each case, the respondents were selected from the sample frame, namely the list or database of all members (Doherty, 1994:4). Therefore, more on the SAPOA research findings will be discussed later in the empirical study.

5.3.2 Purposive sampling

According to Neuman (2011:274), purposive sampling is appropriate for selecting unique cases that are especially informative. In purposive sampling, researchers rely on their experience, ingenuity and previous research findings to deliberately obtain participants in such a manner that the sample obtained may be regarded as representative of the relevant population (Huysamen,

2001:44). Table indicates the interviewees selected from the three spheres of government and the other participants.

All the chosen officials were employed in departments contributing to municipal planning processes. It should be noted that not all officials were available to participate in the study. In the Tshwane Metropolitan Municipality, a senior manager knowledgeable in municipal planning was able to respond on behalf of the other sections, whereas in the City of Johannesburg, three managers availed themselves for oral interviews.

Table 5.2: Purposive sampling

Organisation	Category of respondents	Number of respondents	Total
City of Johannesburg Metropolitan Municipality	IDP managers	1	5
	Land use manager	1	
	Property rates manager	1	
	Legal department	2	
City of Tshwane Metropolitan Municipality	IDP managers	1	5
	Land use manager	1	
	Property rates manager	1	
	Legal department	2	
City of Ekurhuleni Metropolitan Municipality	IDP managers	1	5
	Land use manager	1	
	Property rates manager	1	
	Legal department	2	
National government	Officials	5	6
Provincial government	Officials	1	
South African Planning Institute (SAPI)	Gauteng chairperson	1	1
SAPOA	Members	50	50
SACPLAN	Chief executive officer	1	1
Cities Network	Official	1	1
SALGA	Official (on behalf of municipalities)	1	1
Consultants	Consultants	19	19
Ratepayers Association	Representatives	3	9
Total			100

Source: Own construction (2019)

5.4 DATA COLLECTION METHODS

Merriam and Tisdell (2016:105), states implicitly that data are nothing more than ordinary bits and pieces of information in the environment. Merriam (2009:14) explains that researchers who conduct basic qualitative research are primarily interested in how people interpret their experiences, how they construct their worlds, and what meaning they attribute to their experiences, while other types of qualitative research share this same focus. Other types of qualitative research include additional components not found in basic qualitative research. Merriam and Tisdell (2016:202), explain data analysis as a process of making sense out of the data. Furthermore, data analysis then occurs with data being organised according to themes, or reoccurring patterns. Based on this logic, questionnaires and interviews were used as instruments to collect data for this study.

5.4.1 Questionnaires

The use of questionnaires in the study is essential as it allows the researcher to analyse information received from participants. Babbie (2014:262,266) highlights the importance of questionnaires as a method to determine the extent to which respondents hold a particular perspective or attitude, thus questions must be relevant. The questionnaire consisted of three sections, namely biographical data, perceptions about municipal planning processes and experiences on the impact of national and provincial legislation on municipal planning processes and service delivery. The benefits of using self-administered questionnaires in this study are reflected in Table .

Table 5.3: Benefits of self-administered questionnaires

Benefit	Explanation
Cost	Questionnaires are less expensive than interviews because they do not involve the cost of hiring, training, and employing skilled interviewers.
Efficiency	Surveys can be distributed in large numbers all at once and involve less administrative time.
Anonymity	The respondent is assured of anonymity and privacy and can therefore feel freer to provide honest responses.
No interviewer error	There is no possibility of interviewer bias.

Source: Own construction (2019)

The questions were responded to and returned without any cost to the respondents. This included those who preferred an oral presentation. However, some responses were not responded to adequately as some respondents indicated that they did not have adequate time to evaluate all legislation impacting on municipal planning and gave answers to what was generally known to them based on their work experience. Respondents were made aware that this was a doctoral

study and those who requested an ethics approval from the North-West University were assured that the responses given would be used solely for the purpose of this study.

5.4.1.1 Piloting and revising the questionnaire

Before conducting the research, the questionnaire was pretested with ten respondents from the participating organisations. The aim of this exercise was to determine the respondents' understanding and ability to answer the given set of questions, to highlight areas of uncertainty, to spot errors and provide an estimate of the average time each questionnaire would take to complete (Babbie, 2014:273). Shortcomings that were identified included restrictions in responding to multiple choice questions and giving 'yes' or 'no' answers. The restrictions were due to the nature of the study as it required respondents to demonstrate their knowledge of various pieces of legislation, municipal planning, the planning systems as well as the role and responsibility of each sphere of government. Furthermore, inconsistencies in the methods of questioning were identified by the pilot test and were subsequently corrected to enhance the efficacy of the questionnaire and, ultimately, the quality of the data sought.

5.4.1.2 Maximising the response rate

According to Babbie (2014:275,278), questionnaires can suffer from low response rates, which can be a source of bias or subjectivity, which in turn could harm the credibility of the study. Strategies applied to maximise the response rate in this study included the following:

- An introductory letter via email explained the aims and objectives of the study.
- This was followed by a friendly reminder letter and follow-up calls after two or three weeks.
- Oral interviews and the same oral questions used were put as a simple and user-friendly questionnaire to ensure that questions are understandable and relevant to the subject matter.
- No more than 10 questions were asked and could easily be responded to in less than an hour.

5.4.2 Interviews

In addition to using questionnaires, interviews were also employed to collect qualitative data from municipal, provincial and national officials at the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities. An interview is a dialogue between a skilled interviewer and the person being interviewed, and can explore complex issues in depth, as well as positively giving evaluators an intuitive sense of the situation (Morra Imas & Rist, 2009:333). A major advantage of interviews is that they include open-ended questions that yield direct quotations about respondents' experiences, opinions, feelings and knowledge of the research subject.

Patton (2002:2&14) identifies four crucial types of questions that need to be considered when designing an interview guide. These include experience and behaviour questions regarding interviewees' experiences, actions, or behaviours; and opinion and values questions where the interviewer is concerned with interviewees' opinions or beliefs regarding a certain topic or event. Hence, the questionnaire contained questions such as the understanding of municipal planning, experience of the planning system and its efficiency; and knowledge of legislation reform that was done post-1994. The questions allowed the respondents to express their knowledge, experience, opinions and provided possible interventions.

5.4.3 Document analysis

Bowen (2009:27) defines document analysis as a systematic procedure for reviewing or evaluating documents – both printed and electronic (computer-based and Internet-transmitted) material. Like other analytical methods in qualitative research, document analysis requires that data be examined and interpreted in order to elicit meaning, gain understanding, and develop empirical knowledge (Rapley, 2007:88 & 89; Strauss & Corbin, 1990:17). Documents contain text (words) and images that have been recorded without a researcher's intervention. Atkinson and Coffey (2004:58) refer to documents as 'social facts', which are produced, shared, and used in socially organised ways. The significance of document analysis in qualitative inquiry cannot be overemphasised, and it is indeed stressed by Henning (2004:3) stating that there is less control in variables so that there is freedom in natural development of action and representation of what the researcher seeks to capture.

Based on the above, a wide variety of documents pertaining to national, provincial and municipal legislation were reviewed. These included but were not limited to the following: The Constitution, SPLUMA, the Municipal Structures Act, municipal IDP documents and selected court judgements on municipal planning. Other important documents and articles included law review reports and journals relevant to service delivery, the planning system as well as the municipal planning documents.

5.4.4 The research processes

Using the research instruments mentioned above, the study was conducted in two interrelated phases between April and May 2015 as shown in Figure During Phase 1, interviews were conducted with municipal, provincial and government officials in the three case study municipalities, namely the metropolitan municipalities of the City of Johannesburg, City of Tshwane and City of Ekurhuleni. Prior to conducting the study, a letter of consent was sent to all participating stakeholders in April 2016 (see Appendix A). In each case, the interviews were conducted with officials in their respective offices. Each interview session took 35 minutes. Data

was captured in a notebook. Field notes were subsequently transcribed and transferred to a laptop using the Microsoft Word program.

Phase 2 of the research entailed conducting the survey with members of SAPOA, individual planning consultants and the South African Ratepayers Association.

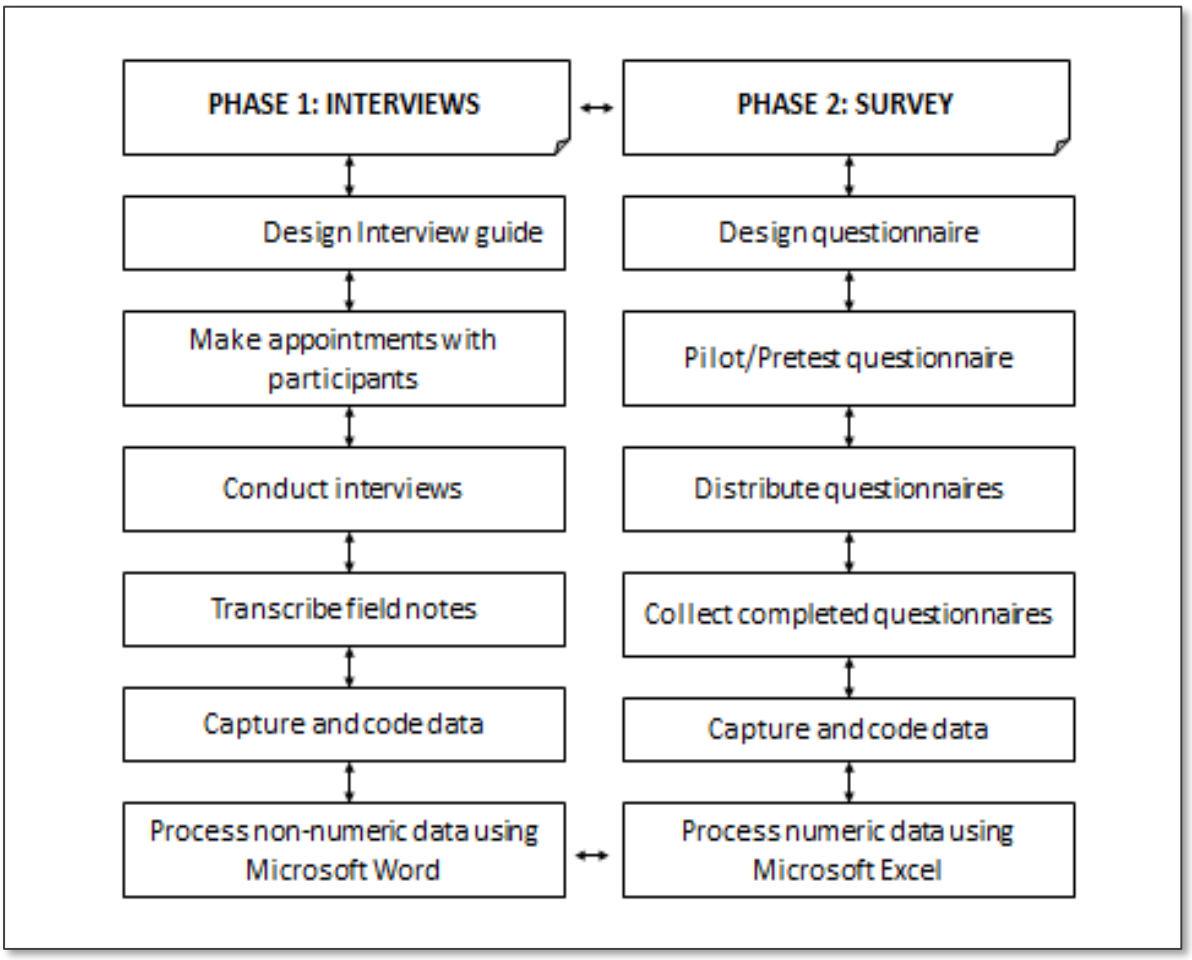


Figure 5.2: The research process

Source: Own construction (2019)

As indicated in Figure , the survey was preceded by a pilot questionnaire to test the feasibility and efficacy of the questionnaire. The pilot survey involved three categories of respondents: from the City of Johannesburg, City of Tshwane and City of Ekurhuleni municipalities; government department; and town planner consultants. Feedback and suggestions from the pilot test were used to improve the design and contents of the questionnaire (Merriam, 2009:127 and Neuman, 2011:359 & 360).

Following the pilot test, the updated questionnaires were printed and distributed to the designated population during April 2016. To optimise the response rate, the questionnaires were sent directly

to the respondents through email. Participants' email addresses were obtained from the database of the three Gauteng metropolitan municipalities. Each questionnaire was accompanied by an introductory letter explaining the purpose and objectives of the study, including instructions on how to complete the questionnaire.

A period of three weeks was also allowed to give respondents more time to read and complete the questionnaires. Upon expiry of the three-week period, the questionnaires were collected from the designated areas. Friendly reminders were also sent via emails to respondents requesting them to return the completed questionnaires. This was a challenge as some of the respondents could not return the questionnaires on time. Seventy questionnaires were sent to non-government officials (developers and consultants) at the beginning of April 2016, and only 11 were returned. These 11 respondents included SAPOA who represents more than 1 000 members.

All three metropolitan municipalities participated. Out of nine critical government departments identified, only five departments responded, namely the National Treasury, Department of Rural Development and Land Reform (DRDLR), Department of Environmental Affairs (DEA), Department of Agriculture, Forestry and Fisheries (DAFF) as well as the Gauteng premier's office. The government state organs who responded were SACPLAN, its affiliates SAPI and the Cities Network, and the South African Local Government Association (SALGA). The response rate of 98% in this survey was sufficient and positive.

5.5 DATA ANALYSIS STRATEGY

In the Oxford Advanced Learners' Dictionary (2010), data is defined as facts, or information, especially when examined and used to find out things or to make decisions. Shamoo and Resnik (2003:46) define data analysis as the process of systematically applying statistical or logical techniques to describe and illustrate, condense and recap, and evaluate data in order to create meaning. The aim of data analysis is to draw inductive or deductive inferences from the data in order to distinguish the phenomenon of interest from the statistical fluctuations.

The office of the Research Integrity cited Alterman (2001:1) cautioning against making biased inferences during data analysis and the chief aim of data analysis should be to distinguish between an event occurring as either reflecting a true effect versus a false one. According to Alterman, any bias occurring in the collection, or selection of the data analysis method, will increase the likelihood of drawing a biased inference. To mitigate this risk, the data analysis process in this study combines inductive and deductive reasoning which resonates with the mixed approach.

Since the study used a mixed approach, it was proper to use ideas by the authors as indicated in Figure , comprising of both qualitative and quantitative data sets in order to allow inferences to

be made across the data (Creswell, 2009:218); and to use descriptive statistics, namely percentages, to illuminate numeric data (Mouton, 2001:108). Questionnaires were developed to capture numerical and qualitative textual data; and to represent numeric data graphically and in frequency tables to allow comparisons across respondents.

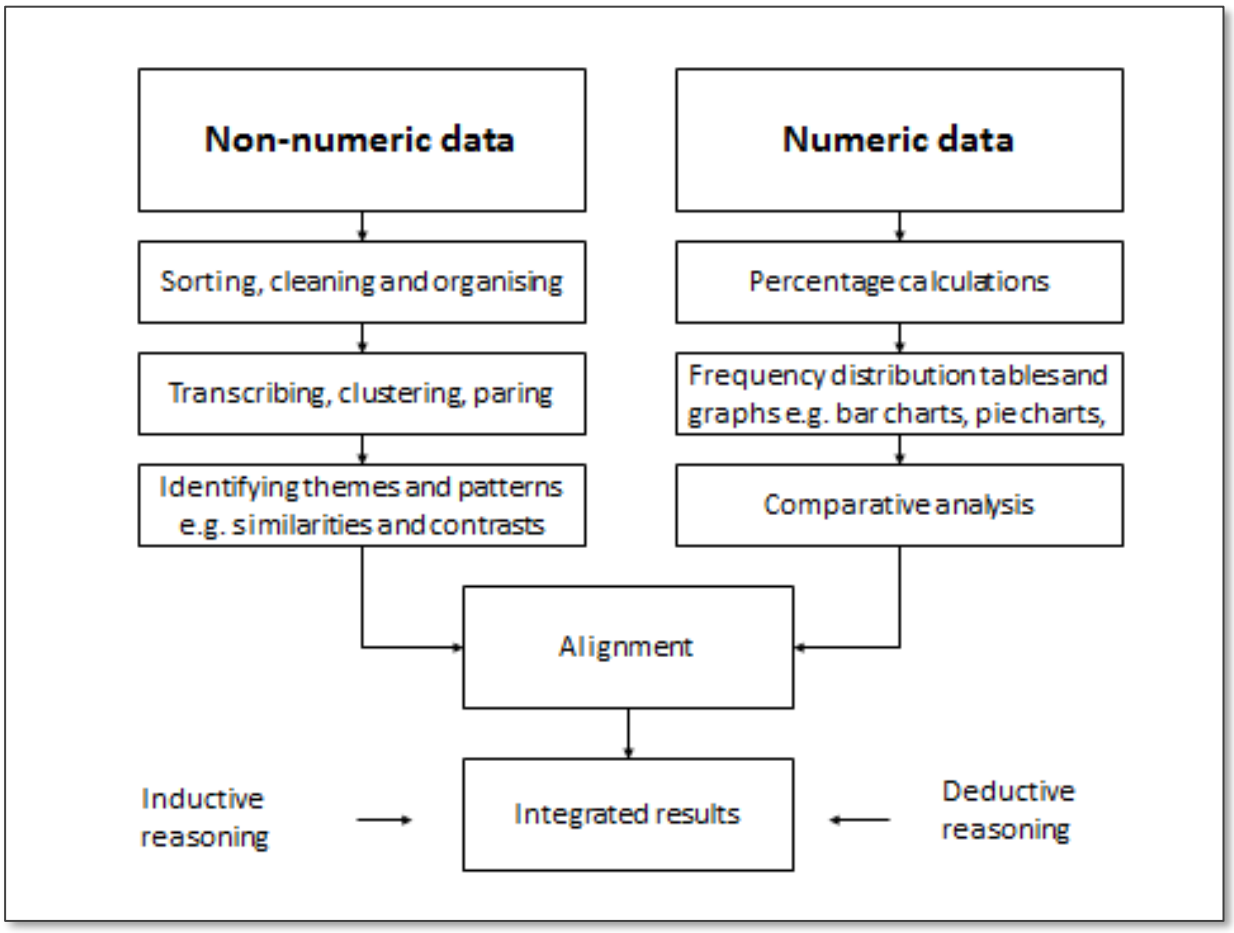


Figure 5.3: Data analysis process

Source: Based on Creswell (2009); Driscoll et al. (2007)

As can be seen from Figure , both quantitative and qualitative data was treated using relevant guidelines. For example, in the case of non-numeric or qualitative data, the key activities entailed sorting, cleaning and organising the data, transcribing field notes and identifying main themes and patterns based on inductive reasoning. With respect to numeric data, the first step entailed using Excel to calculate percentages for each item covered in the questionnaire. Calculated data was then displayed in frequency tables, bar graphs and pie charts to enable clear comparison and inference (see Chapter 6).

5.5.1 Data analysis procedures

5.5.1.1 Deductive reasoning

Deductive reasoning works from the more general to the more specific. Sometimes this is informally called a top-down approach as the conclusion flows logically from premises, namely available facts (Burney, 2008:4). The analysis follows theory, hypothesis, observation, and confirmation. In this study, deductive reasoning was used to analyse the perceptions of the planning consultants and SAPOA members on the impact of national and provincial legislation on planning and service delivery in the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities.

5.5.1.2 Verbatim (direct words or quotations)

As part of the data presentation and analysis process, direct words (verbatim) from the respondents were used to enhance understanding of the results. According to Sainsbury (2006:13), verbatim quotations offer readers greater depth of understanding. People's spoken words sometimes show the strength of their views or the depth of feelings or, on the other hand, their passivity and lack of engagement in ways that the researcher's own narrative could not. While the researcher might describe findings using terms such as anger, regret, disbelief, relief, surprise, appreciation, hope or lack of interest when describing findings, the actual words spoken are sometimes a better representation of the depth of feeling. It could sometimes be useful to show how something affected a person's life by using their own words (Sainsbury, 2006:12).

5.5.1.3 Inductive reasoning

According to Burney (2008:5), inductive reasoning moves from specific observations to broader generalisations and theories. This approach is sometimes called the bottom-up approach because it generates meaning from the pieces of data gathered in order to enhance understanding of the research problem (Leedy & Ormrod, 2001:2 and 2005:32). This reasoning strategy encompasses observation, patterns, tentative hypothesis and theory. In this study, inductive reasoning was applied to understand the inconsistencies between national, provincial and municipal legislation.

5.5.1.4 Grounded theory

In addition to verbatim and inductive reasoning, principles of grounded theory were also applied to enhance understanding of qualitative data in the study. Bogopane, (2013:223) states that Grounded theory involves several steps that include, but are not limited to the following: underlining key terms in the text; restating key phrases; reducing the phrases and creating clusters; reducing clusters and attaching labels (the process of pattern coding); generalisations

about each phrase in the cluster; generating mini-theories; and finally, integrating theories in an explanatory conceptual framework.

Bogopane, (2013:223) cited Miles and Hubberman (1994) presenting the aim of grounded theory as a method to organise data for later and deeper analysis, while at the same time also clarifying ideas about meaning of data and suggesting leads for added data collection. In this study, themes were created in order to analyse and understand the responses provided.

5.6 VALIDITY AND REALIBILITY

Bashir *et al.* (2008:3) explain reliability as a concept used for testing or evaluating quantitative research. On the flip side, Joppe (2000) cited by Bashir *et al.* (2008:36) defines reliability as the "extent to which results are consistent over time and an accurate representation of the total population under study is referred to as reliability and if the results of a study can be reproduced under a similar methodology".

Validity determines whether the research truly measures that which it was intended to measure or how truthful the research results are. While the credibility in quantitative research depends on instrument construction, in qualitative research the researcher is the instrument (Golafshani, 2003:598; Patton, 2002:14). Thus, when quantitative researchers speak of research validity and reliability, they are referring to a research that is credible, while the credibility of a qualitative research depends on the ability and effort of the researcher.

Although reliability and validity are treated separately in quantitative studies, these terms are not viewed separately in qualitative research. Instead, terminology that encompasses both, such as credibility, transferability, and trustworthiness is used (Golafshani, 2003:600; Patton, 2002:14). With a mixed approach, both measures apply. To enhance credibility and integrity of the results in this study, the following methods was used (see Table).

The responses received contained sufficient, reliable and relevant information from all participants. This was possible due to the structure of questions asked, follow-up made and explanation given during interviews. Such interaction between the researcher and participants enhanced the accuracy of responses. The structure of the questionnaire granted participants freedom to express themselves in this topic. Thus, responses received became useful data in verifying the perception and realities of what service delivery should be and connection thereof between the spheres of government. Themes were useful in sorting out the data, understanding which words that are part of responses were dominant. The dominant responses also played a role in specific areas to be considered part of the negatives and positives of this study.

Table 5.4: Strategies to enhance validity and reliability

Strategy	Application
Random sampling	*Random sampling* of individuals to serve as informants. Although much qualitative research involves the use of purposive sampling, a random approach may negate charges of researcher bias in the selection of participants (Shenton, 2004:65). Random sampling also helps to ensure that any 'unknown influences' are distributed evenly within the sample (Preece, 1994:102).
Verification	This entailed checking the accuracy of the answers and suggestions provided by the respondents.
Triangulation	Different data collection methods were used to generate sufficient data from respondents. One major advantage of varying data collection and data analysis tools is that it enhances meaning (Leavy, 2014:486). Data sources or informants will also be varied to ensure that the different perspectives of the various stakeholders are reflected in the research findings. Triangulation represents varieties of data, investigators, theories, and methods (Berg, 2007:227). Site triangulation may be achieved by the participation of informants within several organisations so as to reduce the effect on the study of particular local factors peculiar to one institution. For example, the study uses multiple cases involving three metropolitan municipalities, government departments, SAPOA and planning consultants.
Follow-up	This entailed using such tools as telephone, emails or cell phone to get extra information or clarity on certain issues pertaining to the study.
Transcribing and processing field notes	This technique was applied mainly to qualitative data which requires a lot of reflection and inductive reasoning.
Pilot test	This was done prior to conducting the study in order to determine the accuracy, practicality, relevance and reliability of the questionnaire.
Editing	Proofreading each draft to identify grammatical and/or spelling errors, rewording the document in terms of structure and layout, as well as sequence of main themes and subthemes in each chapter to ensure coherence and logic.

Source: Own construction (2019)

5.7 METHODOLOGICAL LIMITATIONS

Limitations are concerned with what can, and what cannot be concluded on the basis of the proposed research. These are associated with research methods and the circumstances beyond the control of the researcher (Denscombe, 2012:105). The limitations in this study concerned generalizability and extrapolation of the research results. Generalizability refers to the researcher's ability to generalise the results from the sample to the population from which it was drawn (Polit, 2010:1452).

According to Falk and Guenther (2007:2), generalizability is the degree to which research findings are applicable to other populations or samples. Generalising means knowing the limit of a heuristic (empirical) study and is also seen to be central to the definition and creation of valid

public knowledge (Metcalfe, 2005:5, 8). It is sometimes equated with the terms ‘transferability’ and ‘external validity’ (Tashakkori & Teddlie, 2003:38).

Yin (2014:16) mentions that a case study is an empirical inquiry that investigates a contemporary case in depth within its real-world context, especially when the boundaries between phenomenon and context may not be clearly evident. The multi-case in this study are the three metropolitan municipalities, namely the City of Johannesburg, City of Tshwane and City of Ekurhuleni. Aside from multiple case methodologies, a degree of generalizability can be achieved by ensuring that the research report is sufficiently detailed for the reader to be able to judge whether or not the findings apply in similar settings (Falk & Guenther, 2007:4).

In addition to the above, blending research instruments provides an ideal opportunity to include both numerical and non-numerical data in the study, thus alleviating the shortcomings associated with using any one of these two research methods (Creswell, 2003 and Tashakkori & Teddlie, 2003: 267). A limitation in this study was that municipalities do not have much literature that deals with law reform and land reform. Municipal planning is not elevated the same as the IDP. The researcher had to take different documents and policies and make sense of them in order to understand how municipalities perform municipal planning as per the constitutional provision.

5.8 ETHICAL CONSIDERATIONS

Israel (2015:4) brings an interesting contribution stating that research ethics governance sits within broader structure and power relations that may shape multiple variable such as economic indicators, social trends, institutional politics and resources. Drew (2007:56) mentions that ethics has become a cornerstone for conducting effective and meaningful research. As such, the ethical behaviour of individual researchers is under unprecedented scrutiny (Best & Kahn 2006; Field & Behrman, 2004; Trimble & Fisher, 2006). As defined by Denscombe (2012:122), research ethics is about setting standards for conducting research with a view that participants to do not suffer harm as a result of participating in the research. Henning (2004:4&73) stresses the ethical considerations associated with interviews, stating the fact that respondents need to give informed consent to participate in a research study so that there is trust and freedom. This means that they must be fully informed about the research for which the interview is going to be used. They need to know that their privacy and sensitivity will be protected and what is going to happen with their information after recording.

5.8.1 Consent

According to Drew (2007:57), consent involves the procedure by which an individual may choose whether or not to participate in a study. The researcher's task is to ensure that participants have a complete understanding of the purpose and methods to be used in the study, the risks involved, and the demands placed upon them as a participant (Best & Kahn, 2006; Jones & Kottler, 2006). The participant must also understand that he or she has the right to withdraw from the study at any time. Voluntary consent refers to each individual's ability to exercise the free power of choice without the intervention of force, fraud, deceit, duress, or other forms of constraint or coercion. This right to exercise choice must be present throughout the entire research process (Drew, 2007:59).

In keeping with this principle, respondents were informed that participation in the study was voluntary and thus not coercive. To secure consent, the participants were informed about the purpose and objectives of the study.

5.8.2 Approval

The proposal to conduct the study was approved by the North-West University in 2015. A letter of approval from the University was given to the participants prior to conducting the interviews and survey (see Appendix B). This letter served to validate the study. In addition to securing approval, respondents were informed about the objectives of the study and their right to voluntary participation.

5.9 ANONYMITY AND CONFIDENTIALITY

According to Wiles *et al.* (2006:3), confidentiality and anonymity are related but distinct concepts. The Concise Oxford English Dictionary (2011) defines 'confidentiality' as "spoken or written in confidence; charged with secrets", while 'anonymity' is defined as "of unknown name, of unknown authorship". Confidentiality is linked to the principle of privacy (Oliver, 2003:74). Thus, making privacy assurances to participants is one of the requirements of informed consent in research (Whelan, 2007:4).

In considering privacy related to the conduct of research, several factors must be addressed (Drew, 2007:67): First, the sensitivity of the data in the view of the individual or group being studied should be considered. The setting in which research is being conducted may also be an important factor in considering a potential invasion of privacy. A final point regarding privacy involves how public the information is. Subjects may not believe that their privacy has been seriously threatened if only one or two people know, for example, the researchers collecting the data.

Consistent with the principle of anonymity and confidentiality, pseudonyms (fictitious) names were used to protect the identity of the respondents. Given that publishing is also an integral part of the overall research process, respondents were reassured that the information they provided on the questionnaire would not be used for public use, only for academic purposes; and that their names would not be linked to the data in the final research report.

5.10 CONCLUSION

Chapter 5 has tabled and explicated the methodology adopted by the study. In retrospect, the study utilised both qualitative research methods, namely interviews and questionnaires, to understand the inconsistencies in national, provincial and municipal legislation and how this affects service delivery on the ground. As indicated, mixed method designs can provide pragmatic advantages when exploring complex research questions. The qualitative data provides a deep understanding of survey responses, and statistical analysis can provide detailed assessment of patterns of responses (Driscoll *et al.*, 2007:26).

The empirical study in the next chapter, as guided by the design and methodology chosen, will also be supported by the literature associated with this study to provide a theoretical framework for the study.

CHAPTER 6: EMPIRICAL STUDY: ANALYSIS, RECOMMENDATIONS AND CONCLUSION

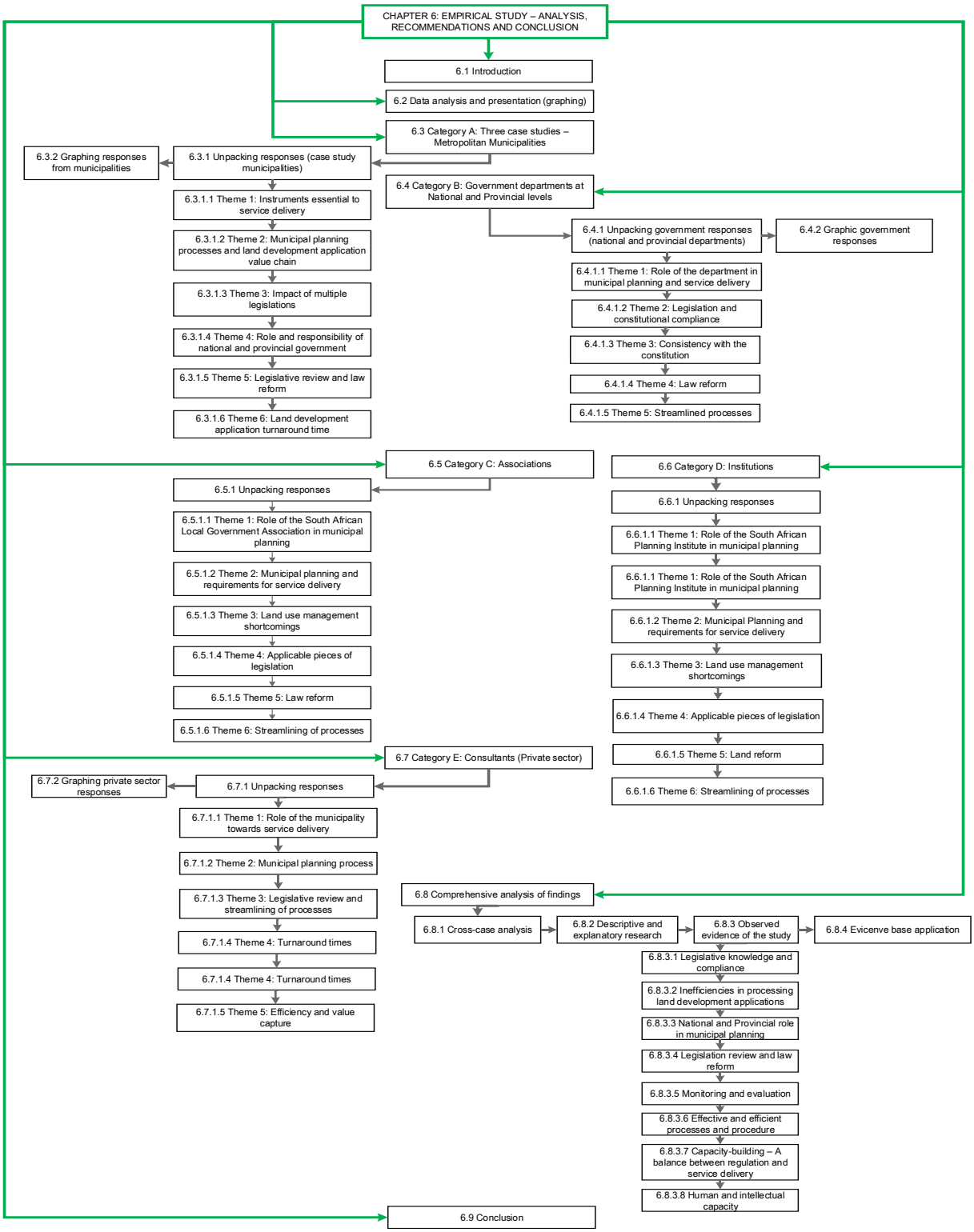


Figure 6.1: Structure of Chapter

Source: Own construction (2019)

6.1 INTRODUCTION

The chapter presents data integration, analysis and presentation. The data presented comes from various sources as outlined in Chapter 3, whereby interviews and questionnaires were responded to by different participants. The collected data addresses the hypothesis made and responds to the following research questions:

1) What is municipal planning in relation to the provisions of the Constitution?
2) What is the significance of law reform in light of municipal planning and service delivery?
3) What is the role of the national, provincial and local government in the broader municipal planning system and service delivery?
4) Which legislation governs and/or impedes municipal planning?
5) Which legislation creates inconsistencies and how do such inconsistencies affect the powers and functions of municipalities?
6) What possible interventions can be explored to reduce inconsistencies while strengthening performance of municipalities on municipal planning and service delivery?
7) What can municipalities do to realise land reform and municipal planning?

This chapter presents the respondents' perceptions, experience and understanding of legislation imperatives and application on municipal planning matters and service delivery efforts. It should be noted that certain identified participants in this study did not positively respond to the invitation to participate as planned. The random sample was used to identify 100 participants. The number and quality of the responses received, surpassed the number of non-participants. The lack of responses did not weaken the data integration, analysis and presentation. Table shows how the 100 participants were categorised and responded.

Table 6.1: List of participants to the study

Organisations/sample	Category of respondents	Number of approached respondents	Number of respondents participated
City of Johannesburg Municipality		5	5
City of Tshwane Municipality		5	1 Representing the identified five departments
City of Ekurhuleni Municipality		5	3
Government department			
Gauteng Premier's Office		1	1
Department of Rural Development and Land Reform		1	1

Organisations/sample	Category of respondents	Number of approached respondents	Number of respondents participated
Department of Planning, Monitoring and Evaluation (DPME)		1	1 Not representing the department
DAFF		1	1
DEA		1	1
National Treasury		1	1
Associations			
SAPOA members		50	Data provided represented more than 100 participants
SALGA		1	1 Formally on behalf of three piloted municipalities
Cities Network		1	1 Cities Network
Consultants			
Town planners in the private sector		19	8
Ratepayers associations			
City of Johannesburg		3	0
City of Tshwane		3	0
City of Ekurhuleni		3	0
Institutions			
SACPLAN		1	1
SAPI		1	1
TOTAL		**32**	**27**

Source: Own construction (2019)

6.2 DATA ANALYSIS AND PRESENTATION (GRAPHIC)

Verbatim quotations, paraphrasing and illustrations became important in presenting the data collected. Corden and Sainsbury (2006:3) as well as Neuman (2011:169) provided complementary statements for verbatim quotations that have become effective standard practice in qualitative social research. Themes were created and categorised according to the category of participants. In this study, each category of participants played a different role in municipal planning processes. Similarly, the role of the private sector in municipal planning processes is different from that of government, although intertwined. For presentation purposes, multiple themes were created in such a way that each category responded to similar key issues. The use of a matrix became a suitable approach to analyse the data collected.

There were five groups of participants. Responses and data presentation will be done per group. The differences and similarities will be drawn from all groups with the aim of conducting a credible analysis and providing associated recommendations and conclusions relevant to the findings. This section represents consolidated, and to an extent, summarised responses. The data presentation and analysis will be done in the following sequence:

- Category A – Three case study metropolitan municipalities: City of Johannesburg Municipality as Case Study 1; City of Ekurhuleni Municipality as Case Study 2; and City of Tshwane Municipality as Case Study 3.
- Category B – Government departments both at the national and provincial sphere of government.
- Category C – Associations.
- Category D – Institutions.
- Category E – Consultants (private sector).

In each category, there are themes established to contextualise questions asked during the interview or part of the questionnaire. Once the analysis is done, the outcomes will be scrutinised to see how well the research questions have been responded to.

6.3 CATEGORY A: THREE CASE STUDIES – METROPOLITAN MUNICIPALITIES

6.3.1 Unpacking responses (case study municipalities)

In this category, there were six themes and six questions were asked. All three case study municipalities (referred to as municipalities) were asked similar questions in order to reasonably measure, compare and analyse responses given without prejudice.

6.3.1.1 Theme 1: Instruments essential to service delivery

The municipalities were asked which instruments and policies were essential to service delivery. The purpose of this question was to ascertain the knowledge of officials on policies and instruments applicable.

Responses:

The municipalities mentioned various pieces of legislation applicable to planning and decision-making. They mentioned pieces of legislation such as the land use scheme, SPLUMA, the Gauteng Removal of Restrictions Act (3 of 1996), Gauteng Town-Planning and Township Ordinance (15 of 1986), Municipal Systems Act (32 of 2000), National Environmental Management Act (107 of 1998), and the National Land Transport Transition Act (22 of 2000). These mentioned pieces of legislation were developed and administered by either the national or

provincial sphere of government. Each piece of legislation has its own requirements, processes and time frames to be adhered to when determining and deciding on a land use development application. The municipalities also mentioned various frameworks and plans, such as the municipal SDF, IDP, precinct plans, infrastructure plans and growth and development strategies.

6.3.1.2 Theme 2: Municipal planning processes and land development application value chain

The municipalities were asked a question that related to their comprehension of municipal planning processes and the land development application value chain.

Responses:

Municipalities responded using the application of legislation and policies, experience and observations over time. In short, municipalities responded in four ways:

- Legislative framework: Municipalities stated that there are various pieces of legislation from the three spheres of government that are involved in determining and deciding on a land development application. These pieces of legislation make municipal planning highly regulated. These pieces of legislation are used to guide procedures involved for granting rights or permission. Depending on the nature of a proposed development, the municipality can either grant rights in terms of township establishment, rezoning or consent use procedures.
- Standard operation procedures and effective systems: A land use management system of the municipality needs to be effective to control and systematically enable various aspects to unfold leading to decision-making. This deals with the development application value chain indicating who does what, when and how.
- Service delivery model: The municipalities connected legislation and good governance to an effective service delivery model, stating that when the municipal planning processes and land development applications value chain are adequately synergised, and legislative requirements are adhered to earnestly, then service delivery can be possible.
- Intergovernmental relations: The municipalities mentioned that all three spheres of government must play their role in accordance with the Constitution.

6.3.1.3 Theme 3: Impact of multiple legislations

The municipalities were asked to share the impact and effectiveness of multiple legislation as mentioned under Theme 1 regarding the land development application value chain. This question sought to determine efficiency in terms of the time taken for decision-making and also to establish

the impact of using multiple pieces of legislation in determining and deciding on a land development application.

Responses:

The municipalities mentioned that legislation is needed to guide development. However, integration or streamlining of processes is necessary to avoid time delays. Furthermore, time frames, as legislatively stipulated, must be adhered to by all parties involved. Applicants must submit correct and complete applications so that no application is pending due to incorrect information or outstanding documentation that is legally required. When all requirements are met, municipalities can be able to deal with applications in a short period of time. It was said that delays are often linked to poor municipal systems and processes which are not entirely true. Tshwane Municipality then made a practical example stating that:

> An applicant submits an incomplete application on 1 June 2015 and on 16 February 2016 submits all outstanding corrected information. The municipality determined and decided on the application in April 2016. In reality, the municipality took less than eight weeks (16 February to April 2016) to render its decision. However, statistically the system reflects the submission and finalisation date, thus indicating that the municipality took eight months to decide on an application.
>
> On the other hand, the applicant will not recognise that his or her application was pending (dormant) for months due to incomplete information. Thus, during the performance assessment period, auditors will assess efficiencies using the municipal approved Standard Operation Procedure, indicating that an average time for finalising a land development application is three to six months. The outcome of the assessment will indicate inefficiencies as the system showed submission dates 1 June 2015 and finalisation date April 2016, which in calculation is eight months, meaning that the municipality was inefficient for finalising a land development application outside the stipulated turnaround time. However, the true assessment neglected to capture the delays caused by the applicant. Municipalities are often assessed on issues that they do not have full control of as finalisation of land development is dependent on many factors and role players.

The City of Johannesburg Municipality indicated that lack of adequate capacity in other instances may cause delays in finalising development applications.

6.3.1.4 Theme 4: Role and responsibility of national and provincial government

In this theme, municipalities were asked about the role of the provincial and national sphere of government in the land development applications. The question was asked to determine how

officials understood and perceived national and provincial government's role insofar as providing support on municipal planning processes is concerned. This question related to intergovernmental relations as enshrined in the Constitution.

Responses:

Municipalities responded by acknowledging the legitimate supporting and monitoring role that provincial and national government can play in municipal planning. Historically and inherently, legislation from national spheres of government was developed in such a way that it gave powers to the provincial sphere to manage and decide on municipal planning matters. This impacted negatively on municipal planning processes as the provincial government often overlooked municipal laws during decision-making.

During the interview, Area Manager, official at the City of Ekurhuleni, mentioned the importance of fulfilling the principles of cooperative government and intergovernmental relations as provided for in Chapter 3, read with section 151(4), 154(1) and 156 of the Constitution.

Based on the responses, it can be said that the municipalities clearly demonstrated their role that the national and provincial sphere of government should play. It also indicated that municipalities need the provincial and national government to cooperate in municipal planning matters to ensure effective service delivery.

6.3.1.5 Theme 5: Legislative review and law reform

Legislative reviews dealt with the manner or frequency that municipalities revised their laws. Municipalities were asked how many times the policies and legislation used to determine and decide on land development applications such as service agreements and bulk contribution policies, have been revised. The question sought to establish how often the municipality ensured its relevance, given the ever-changing needs of the community and also, in general, to be on par with the global standard insofar as growth and development are concerned.

The municipalities indicated that some policies are reviewed yearly; every three years. Ultimately, municipalities do review their laws. However, the extent and impact of legislative reviews on the ground are not known. There was no indication as what informs policy review other than the IDP which is reviewed to comply with the provision of the Municipal Systems Act. It is not clear if such review is done in a manner that is impactful and progressive or just a compliance exercise. Thus, it cannot be indisputably concluded that the review is done to improve the quality of lives as per the ever-changing global standards and catering for community needs.

Law reform dealt with the frequency that the national and provincial spheres of government have undertaken through a law reform process. The municipalities were asked if they had knowledge

of national and provincial government reforming the pieces of legislation that have an impact on land development applications. The municipalities replied by saying that different pieces of legislation have been developed over the years. An example is SPLUMA. However, no law reform exercise has been undertaken to ensure there is synergy between legislation. Processes, where possible, can be integrated or streamlined, but requires strong-willed intergovernmental relations. It was suggested that some legislation can be repealed as they create a parallel mechanism in land development processes and is inconsistent with the constitutional reformation of government.

6.3.1.6 Theme 6: Land development application turnaround time

This theme is connected to Theme 4. Municipalities were specifically asked whether turnaround time was acceptable to the municipality and to the public, insofar as development and service delivery are concerned. This question was asked to determine the efficiency and effectiveness of the land use management systems employed by the municipality. This question provided practical functionality of the system or value chain when a land development application is submitted to the finalisation thereof.

Responses:

Municipalities indicated that turnaround times were not acceptable; it takes time to finalise a land development application, indicating that a simple single land development application can take up to five years due to compliance with multiple pieces of legislation and the value chain associated as one process must be concluded before the next process can be completed. For example, construction cannot start without approved building plans; building plans cannot be approved before other pieces of legislation have been satisfied. The value chain becomes key and should be systematic and harmonious.

Municipalities have indicated that through SPLUMA, turnaround times can be made shorter. This will depend on how the SPLUMA by-law are crafted in dealing with development application processes. Importantly, SPLUMA says that application must be submitted once completed. This means that municipalities should not have to accept incomplete applications and pending them until such time as the outstanding information is submitted. Thus, with SPLUMA, there will be a substantial change in the land development application according to the municipalities. They will be able to attract more investment as there will be certainties about turnaround times associated with decision-making.

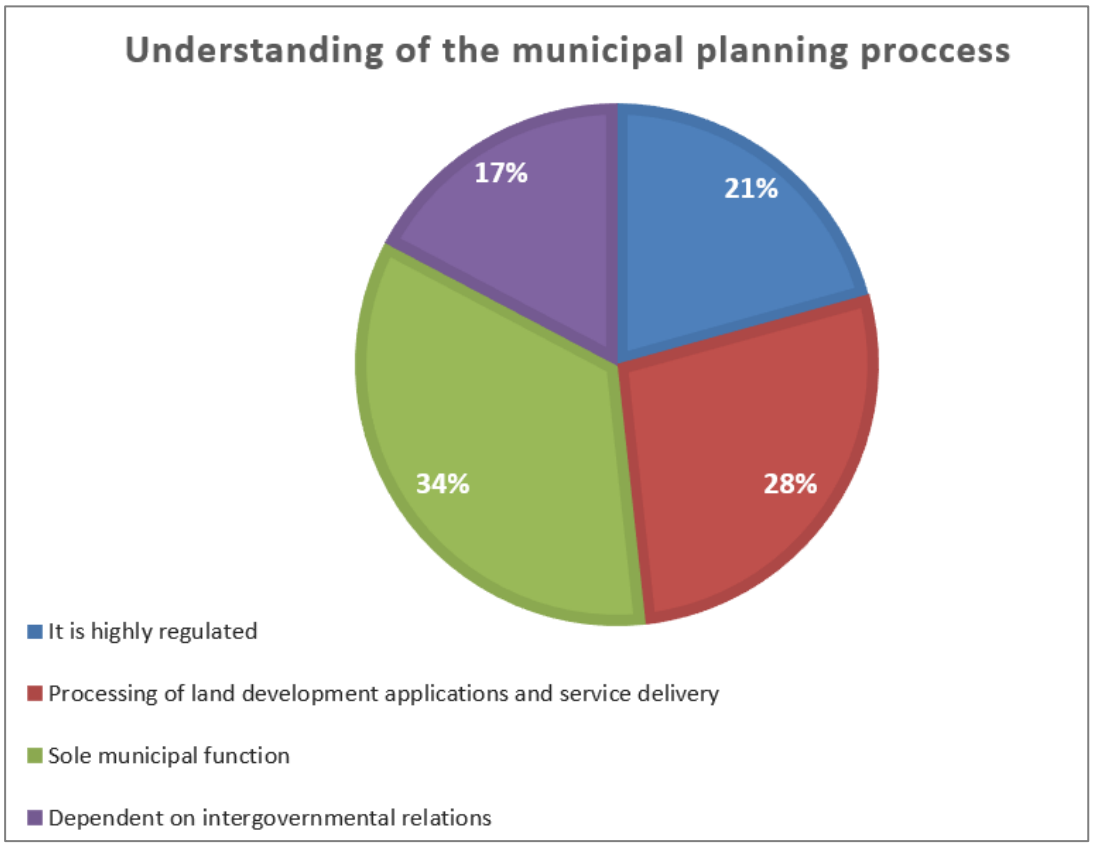
During this analysis, it has been found that all three metropolitan municipalities run in a similar way and have a similar mandate, even though execution may differ in accordance with systems used. As a result, they encounter similar challenges. There are no big differences in the manner

in which municipal planning processes or the development value chain are conducted. Such similarities are attributed to the fact that municipalities in Gauteng use the same pieces of legislation when dealing with municipal planning. Differences can be seen in the municipal IDPs or SDFs as these instruments cater for specific municipal developmental issues. However, land use schemes used by municipalities have adopted principles and land classification as the global standard in regulating land uses.

Furthermore, developers or applicants turned out to be the same people who submit land development applications within these three municipalities. Thus, if a developer is the one that submits incomplete applications, it may happen in all three municipalities, creating inefficiencies. On the other hand, government departments do not adhere to legislative time frames when required to render comments. Below is a simple statistical analysis used to capture the responses of participants. Graphs and charts have been used to provide a simplified analysis of responses given.

6.3.2 Graphing responses from municipalities.

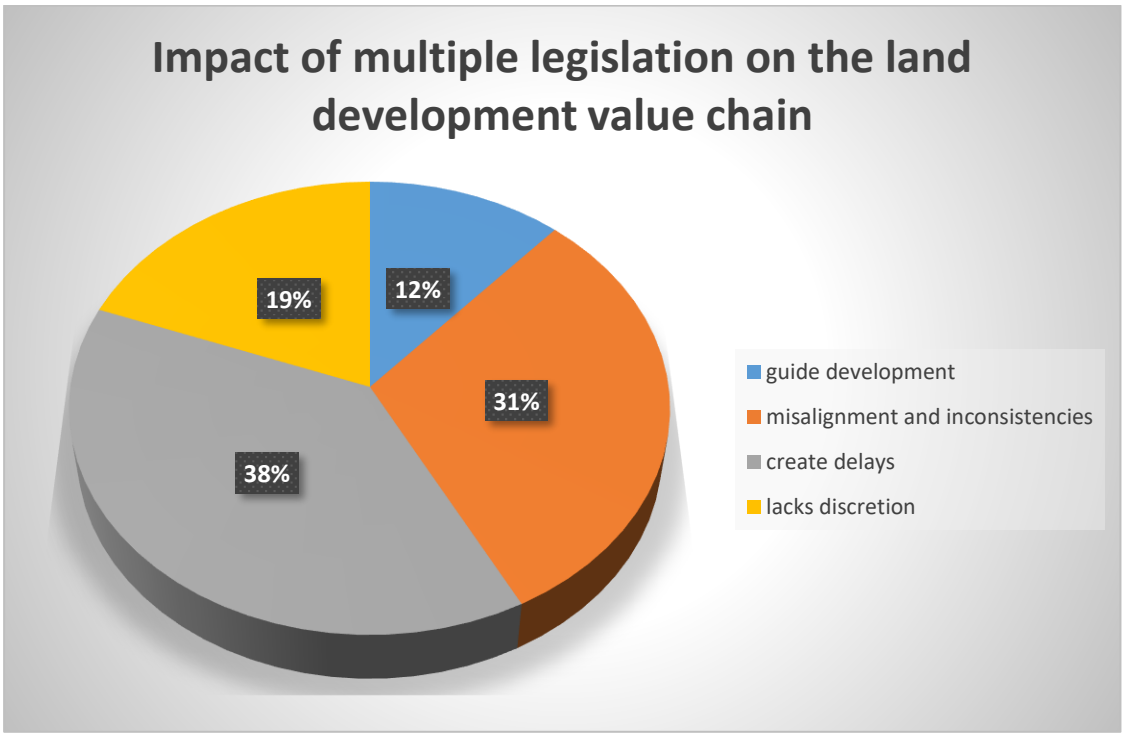
Graph presents the responses captured under Themes 1 and 2.



Graph 6.1: Understanding of municipal planning

Source: Own construction (2019)

The deduction made under Graph 6.1 is that municipal planning is highly regulated as per the number of pieces of legislation that a single land development application has to satisfy. It is understood by participants that municipal planning is a sole constitutional mandate of local government; however, municipal planning cannot entirely be achieved outside the intergovernmental relations framework. All three spheres of government have a distinct, yet interrelated role play towards any land development application. Land development applications are a vehicle to achieve an orderly built environment. Land use applications are adjudicated using a Land Use Scheme which is a legal instrumental that has the intelligence to bring a balance between people's needs and development outcomes that needs to be reduced and simplified. People's needs and development outcomes are referred to as service delivery, which together with municipal planning, are the key local government functions.

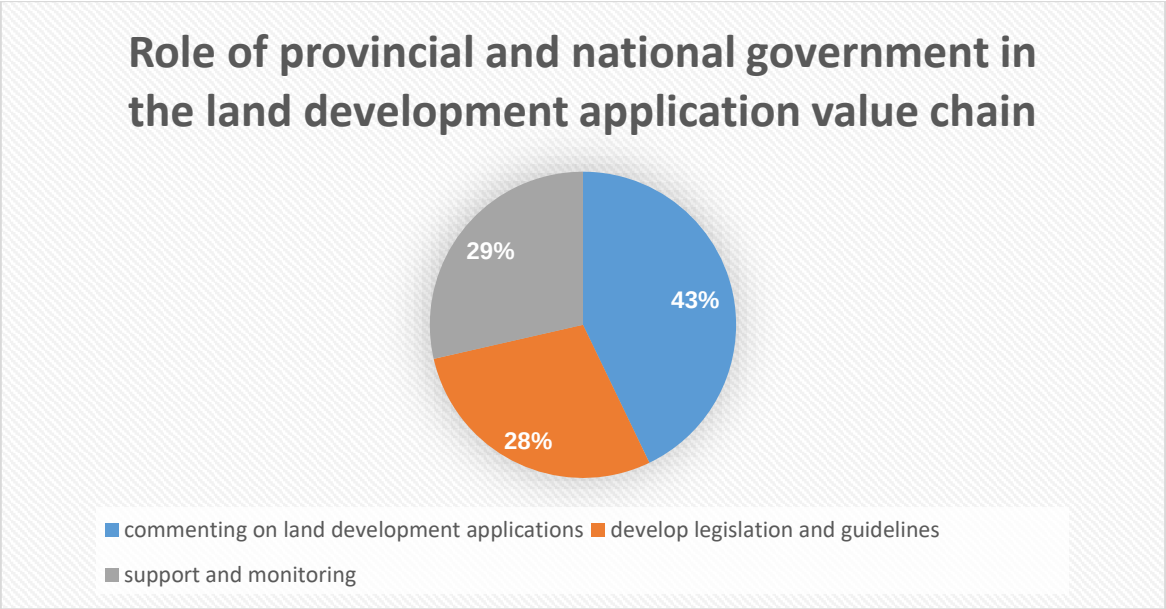


Graph 6.2: Impact of multiple legislation

Source: Own construction (2019)

Graph 6.2 indicates that respondents understood municipal planning to be a municipal function. It prescribes mechanisms essential in facilitating development. However, multiple pieces of legislation are used to compile, determine and decide on land development applications, and have been found to be inconsistent. There are misalignments and inconsistencies in various legal apparatus used to guide the adjudication of land development applications. This creates delays in decision-making and often decision-makers lack discretion as a result of inconsistencies in the provision of various laws which are used to make decisions of proposed developments. Delays

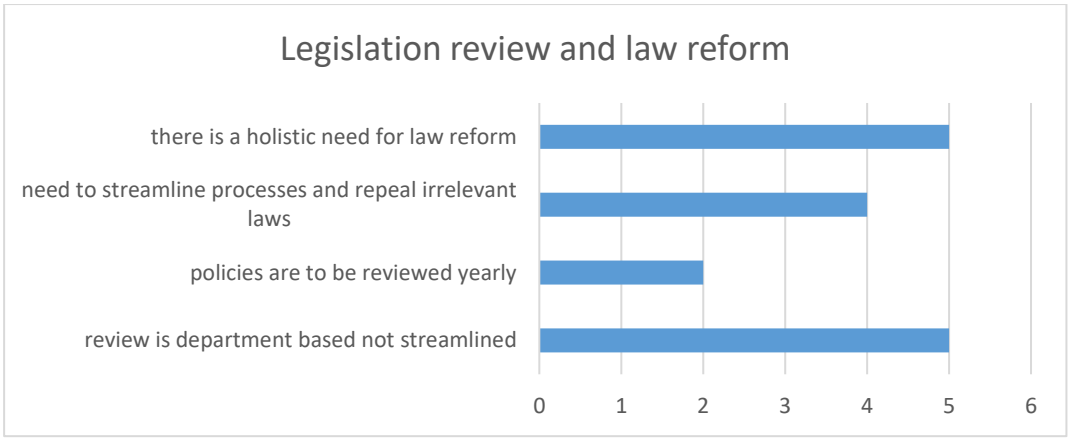
in land development applications came out as a major concern as a result of multiple pieces of legislation that a land development application has to comply with.



Graph 6.3: The role of provincial and national government in municipal planning

Source: Own construction (2019)

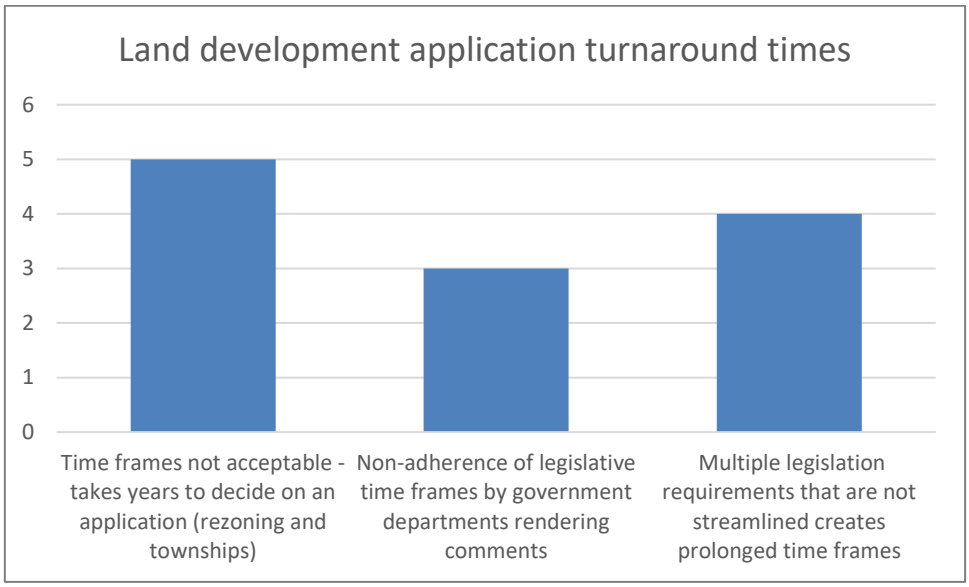
The above graph shows that the roles of national and provincial spheres of government comment on land development applications. Developing legislation used to guide development and adjudicate on land development applications. It is clear that the role of national and provincial government is not municipal planning but to offer support, and where required, develop policies and monitoring guidelines necessary to ensure that municipalities achieve their developmental goals. The role of the national and provincial part is guided by the intergovernmental relations framework as provided for in the Constitution.



Graph 6.4: Legislation review and law reform

Source: Own construction (2019)

This graph illustrates the dire need for holistic law reform by government so that processes can be streamlined, and where possible, irrelevant laws repealed. The participants agreed that policies were reviewed yearly; however, the review process was not coordinated or streamlined but are sector or department based.



Graph 6.5: Turnaround time associated with land development application

Source: Own construction (2019)

The above graphs indicate that delays in the land development application value chain are huge. Time frames associated with determining and deciding on a land development application are not desirable as there is a non-compliance with legislated time frames by departments in the three spheres of government. Furthermore, multiple pieces of legislation that exist and processes that are not streamlined have a negative impact on planning, development and service delivery.

6.4 CATEGORY B: GOVERNMENT DEPARTMENTS AT NATIONAL AND PROVINCIAL LEVELS

6.4.1 Unpacking government responses (national and provincial departments)

In this category, six government departments participated, of which five were national government departments (DAFF, DEA, DPME, DRDLR and the National Treasury) and one department from the premier's office. The departments were asked the same six questions related to municipal planning processes and the impact on service delivery. Five themes were created to give focus to the responses.

6.4.1.1 Theme 1: Role of the department in municipal planning and service delivery

The departments were asked about their roles in land development application processes and service delivery. The question sought to establish whether departments understand their constitutional mandate on municipal planning and service delivery.

Responses:

The departments provided responses by stating that they are not directly involved in the land development application processes. Their role is to develop legislation that guide land development processes. For example, where a land development application triggers the environmental impact assessment items of the National Environmental Management Act, the DEA as the guardian of the environment, will then contribute by giving guidance on how such a proposed use can be permitted. The record of decision will then guide if such land development application is supported or not.

DAFF will then ensure that agricultural land is protected to secure food security by providing comments either in support of or rejecting the proposed land use. Such comments will then determine if the land development application is supported or not. On the other hand, National Treasury will ensure there is value added to what the municipality has committed on, insofar as infrastructure provision and financial spending on projects are concerned. It ensures that budgeting, spending and service delivery is coherent, beneficial and impactful.

The DRDLR, as the custodian of spatial planning and land use management in the country, must assist municipalities to develop spatial policies and land use laws essential to effectively perform municipal planning and rendering services. The DPME indicated that they oversee the performance of municipalities through the monitoring and evaluation framework and provide capacity support to municipalities.

6.4.1.2 Theme 2: Legislation and constitutional compliance

The departments were asked about the number of known pieces of legislation that municipalities must consider and comply with when dealing with land development applications. The question determines the knowledge of departments on the multiple or known number of pieces of legislation a municipality must consider and comply with when assessing a development application.

Response:

Departments under Theme 1 responded that they had a constitutional mandate to develop legislation guiding municipal planning matters and to protect the land use under its custodianship, for example agriculture or the environment. The responses in this theme indicated that each piece

of legislation is dealing with an interest that competes with the other. It is only on municipal land that the balancing act must take place. In Theme 2, the Department responded by listing various pieces of legislation such as:

- National Environmental Management Act (57 of 2003)
- National Environmental Management: Air Quality Act (39 of 2004)
- National Environmental Management: Biodiversity Act (10 of 2004)
- National Environmental Management: Protected Areas Act (57 of 2003)
- National Water Act (36 of 1998)
- Conservation of Agricultural Resources Act (43 of 1983)
- Management of State Forests Act (128 of 1992)
- National Veld and Forest Fire Act (101 of 1998)
- Spatial Planning and Land Use Management Act (16 of 2013)
- National Building Regulations and Building Standards Act (103 of 1977)
- Black Communities Development Act (4 of 1984)
- Subdivision of Agricultural Land Act (70 of 1970)
- Gauteng Spatial Development Framework (2011)
- Various Ordinances of 1965,1939 and 1986

The above already indicates that both national and provincial spheres of government are aware that there are multiple pieces of legislation that municipalities must comply with when dealing with municipal matters.

6.4.1.3 Theme 3: Consistency with the constitution

The departments were asked if those listed pieces of legislation are in accordance with the provisions of the 1996 constitutional mandate on local government. The objective of the question was to determine whether departments saw the relevance of having multiple legislation regulating municipal planning processes.

Responses:

The departments responded by saying that it is necessary to have multiple pieces of legislation as each governs and protects a particular use. Thus, they are in line with the Constitution as they received the mandate to do so. However, the provincial sphere indicated that there is a need to repeal some of the legislation administered by the provincial sphere to ensure that there is harmony and progress in service delivery.

6.4.1.4 Theme 4: Law reform

The departments were asked when last the department conducted a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other when looking at pre- and post-1996 legislation. The question determines frequency of legislation assessment and reform by government.

Responses:

SPLUMA was mentioned as the legislation that advocates uniformity and streamlining or integrating processes where relevant. DAFF indicated the need for legislation that deals with agriculture in a manner that is consistent with the Constitution is being developed. It is thus seen as part of law reform. National treasury is also looking at aligning legislation that deals with financial and budgetary processes of municipalities.

In short, the departments responded by indicating that the departments are developing legislation to regulate a particular matter. This means at this stage no government department has conducted an all-inclusive law reform exercise to ensure that pieces of legislation that deal with land development and land use management are in harmony with each other when looking at pre- and post-1996 legislation. Hence, each ministry is developing their own pieces of legislation in isolation from existing legislation.

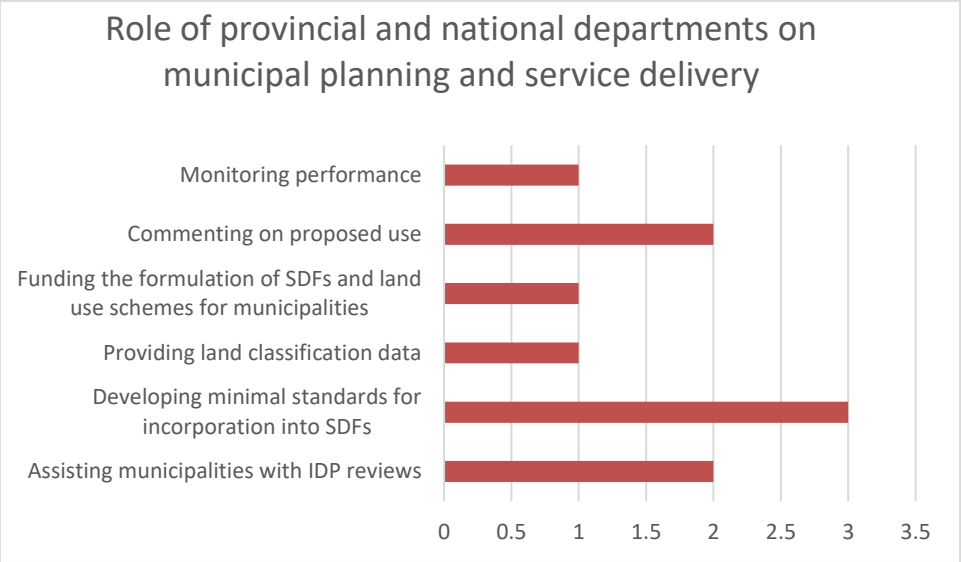
6.4.1.5 Theme 5: Streamlined processes

Does the department consider streamlining processes to reduce the regulatory burden to municipalities? The question was asked to departments to determine the need and the willingness to reduce legislation and streamline the related processes.

Response:

The department indicated that they were willing to streamline processes. There was a feeling of repealing other legislation, for example the Sub-division of Agricultural Land Act. It was mentioned that the exercise has already begun through SPLUMA.

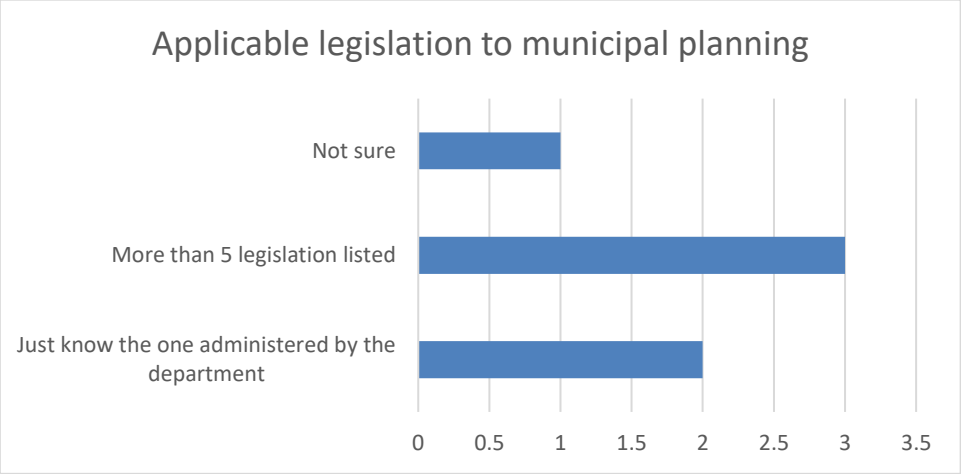
6.4.2 Graphic government responses



Graph 6.6: Role of national government in policy development

Source: Own construction (2019)

Looking at the graph above, it clearly shows the role of provincial and national departments in municipal planning. This role is seen as to provide guidelines necessary to shape the drafting of the SDF and land use scheme, reviewing of the IDP and commenting on land development applications. This emphasises that national and provincial spheres have a role to play in municipal planning, even though the function is mandated to local government. National and provincial government understand that they have a responsibility to support municipalities financially and technically by availing data and different layers essential for the compilation of the SDF and land use scheme. The national and provincial government also indicated that they must monitor the performance of the municipalities in meeting their set targets and development goals.

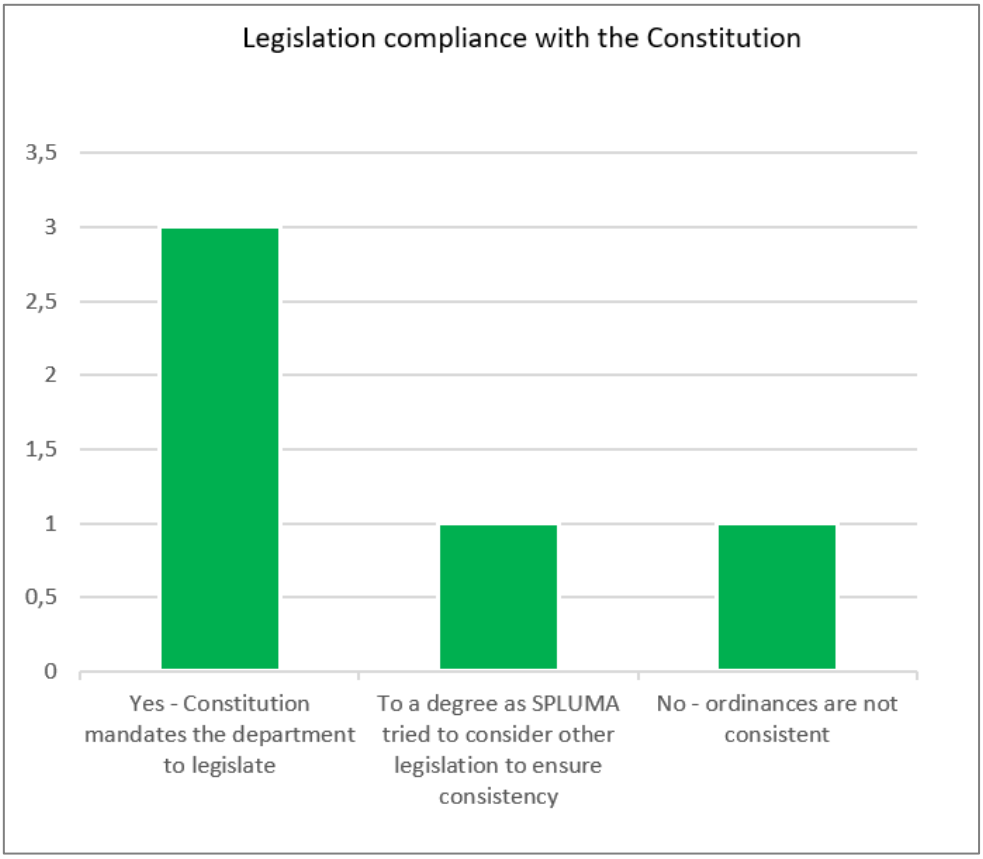


Graph 6.7: Applicable legislation to municipal planning

Source: Own construction (2019)

The above graph provides interesting information – such as that participants conceded that there are more than five legislation known to them regulating municipal planning, while other participants could only articulate legislation relevant to their ministry. This is a clear indication that there is disconnect between policymakers at national and provincial level and implementers at local government level. National and provincial government have no comprehension on how constant developing and passing additional legislation has on municipalities, especially where there is no law reform to determine the impact of passing a new law. The graph reveals that the legislation assessment process is required to review the relevance of existing legislation and to assess the need prior to the introduction and enactment of new legislation.

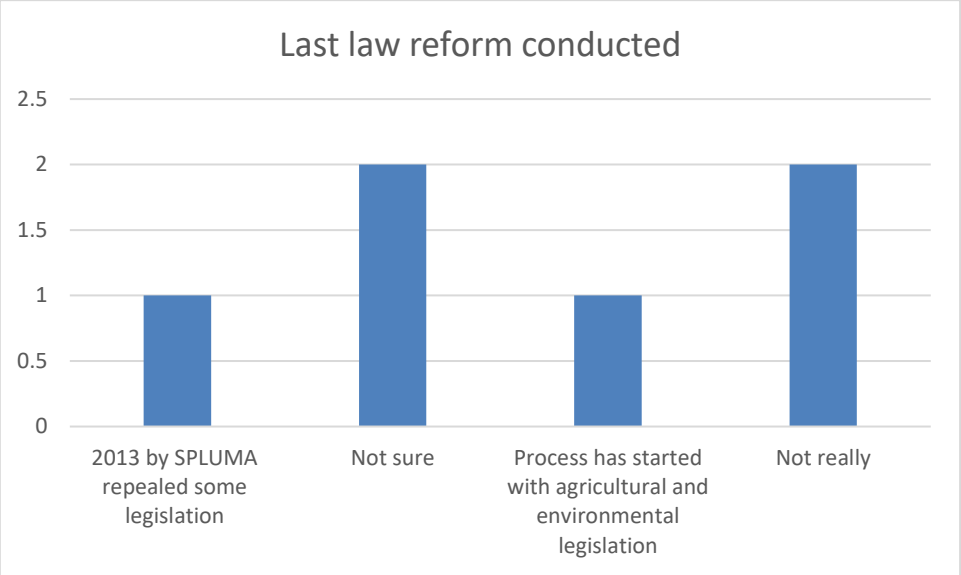
The graph can be interpreted as saying that national and provincial government cannot provide proper support, evaluate and monitor performance of municipalities if they do not have adequate knowledge of pieces of legislation applicable to municipalities and the impact they have on municipal planning.



Graph 6.8: Legislation and constitutional compliance

Source: Own construction (2019)

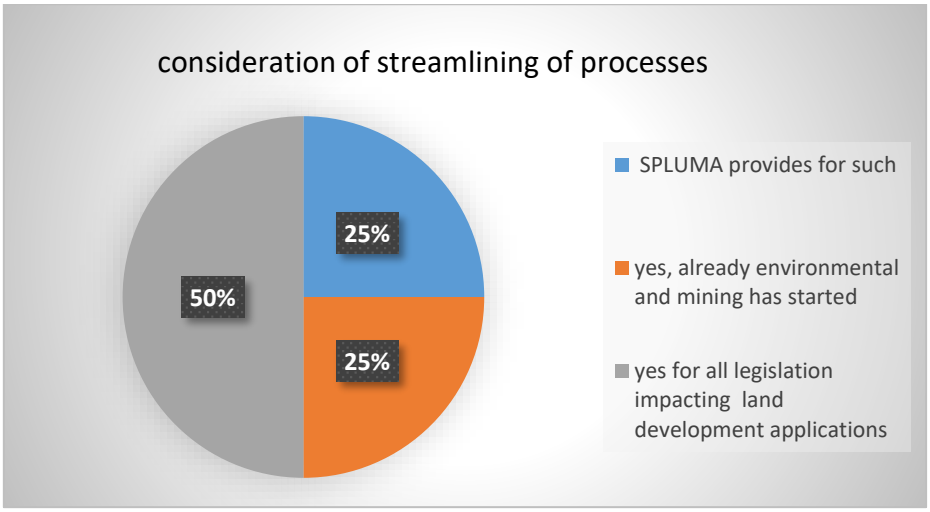
National and provincial governments indicated that developing legislations is as per the provision of the Constitution. In drafting the laws, little is done to consider other applicable legislation. The SDF has been recognised as a piece of legislation that to a degree recognises other legislation in its provisions. Currently, alignment and uniformity in legislation drafting is a concept that has not been tried and tested. It is clear that municipal planning and service delivery will always take place at a slow pace and in an incoherent manner due to the silo drafting mentality, lack of alignment and streamlining of interlinked authorisation processes.



Graph 6.9: Law reform undertaken by departments

Source: Own construction (2019)

In this graph, it is clear that both national and provincial governments agreed that little has been done to reform legislation. There is work that has been started between two departments but the process was looking at two pieces of legislation. SPLUMA was the legislation that was known to have repealed some pieces of legislation that negatively impacted on municipal planning. Another interesting aspect of the graph is the high number of responses that indicated 'not sure'. This can be interpreted as information that is not shared or accessible to officials or the bar confirms that no law reform exercise was conducted; hence, the mentioned of SPLUMA as the legislation known to have tried to repeal obsolete legislation.



Graph 6.10: Streamlining of processes

Source: Own construction

This graph illustrates the appetite and need for streamlined processes. SPLUMA has made provision for alignment and or integration of authorisation processes. The SPLUMA provision presents an opportunity for government to really consider and undertake law reform exercises in order to facilitate and fast track development without red tape creating undue delays. This is an exercise that needs to be undertaken by the three spheres of government. However, the success of law reform requires a political will, commitment from government and support from the public.

6.5 CATEGORY C: ASSOCIATIONS

6.5.1 Unpacking responses

SALGA plays an important role in this study as they are an association representing the local government sphere. Six questions were associated with the themes, and the responses are discussed in the following subsections:

6.5.1.1 Theme 1: Role of the South African Local Government Association in municipal planning

In order for SALGA to indicate its contribution to municipal planning and service delivery, the question was asked: “What is the role of SALGA in service delivery?”

Responses:

SALGA responded that the roles and responsibilities were clearly stated in Chapter 7 of the South African Constitution. Section 152 of the Constitution clearly states the objectives of local government in which service delivery is one of the core functions. SALGA also appreciates that all municipalities must then make resources available in order to meet their developmental duties in a sustainable and equitable manner. The municipalities will also achieve this through

cooperative governance structures and mechanisms, appreciating that some service delivery functions are not inherent within the local government mandate such as housing, health and education.

6.5.1.2 Theme 2: Municipal planning and requirements for service delivery

Under this theme, SALGA was asked: “What is your understanding of municipal planning processes, procedures and requirements in dealing with land development application processes?” The question aimed to establish whether SALGA understands how multifaceted municipal planning and service delivery are.

Responses:

SALGA responded by stating that municipal planning processes, procedures and requirements dealing with land are both at a strategic level in terms of policy statements in the IDP and SDF in terms of the Municipal Systems Act. However, municipalities, as land use regulators, need to further come up with land use management schemes that can enable them to facilitate land development in a sustainable and equitable manner in terms of SPLUMA.

6.5.1.3 Theme 3: Land use management shortcomings

To determine if the land development application process is efficient, SALGA was asked about the shortcomings of the land development and land use management processes.

Responses:

The response related to long turnaround times, especially where environmental considerations need a full environmental impact assessment. This is exacerbated by the different legislative requirements from sector departments that are not necessarily streamlined. However, some municipalities manage these better than others with very efficient systems and decision-making processes that improve turnaround times.

6.5.1.4 Theme 4: Applicable pieces of legislation

SALGA was asked how many pieces of legislation known to the association were involved in the land development application process. This question was asked to establish if SALGA finds the number of legislation applicable to municipal planning as acceptable.

Responses:

SPLUMA makes no clear provision for repealing any outdated and discriminatory laws, such as the Less Formal Township Establishment Act (113 of 1991), Black Communities Development

Act (4 of 1984), Subdivision of Agricultural Land Act (70 of 1970), Land and Transport Transition Act (22 of 2000), and the Physical Planning Act (88 of 1967).

6.5.1.5 Theme 5: Land reform

SALGA was asked when last the department in the national sphere had conducted a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other regarding pre- and post-1996 legislation. The objective of the question was to determine the frequency of legislation assessment and reform.

Responses:

There are pieces of legislation that need to be repealed. Although the legislative requirements are needed, it would assist the municipalities a great deal if their statutory requirements were streamlined in order for municipalities to be able to effectively and efficiently deal with land development applications within their existing institutional framework.

6.5.1.6 Theme 6: Streamlining of processes

The objective of the question, “Does SALGA consider streamlining processes to reduce regulatory burden to municipalities?” was to determine the need and the willingness to reduce legislation and streamline related processes.

Responses:

Old apartheid legislation (ordinances) need to be wholly repealed, and land use, transport and environmental legislation needs to be streamlined.

Analysis:

The responses indicated that municipal planning is complex and administered by multiple pieces of legislation. Such pieces of legislation, with their individual time frames, render municipalities inefficient as turnaround time for decision-making takes longer. This shortcoming is attributed to departments at the national and provincial sphere of government. Furthermore, there is a recognition that some legislation may be repealed and legislative processes may be streamlined.

6.6 CATEGORY D: INSTITUTIONS

6.6.1 Unpacking responses

This category deals with responses obtained from SAPI. There were six questions associated to the themes. The following subsections show the responses received from SAPI.

6.6.1.1 Theme 1: Role of the South African Planning Institute in municipal planning

SAPI was asked: “What is the role of the institute on service delivery?” The objective of the question was to understand the contribution SAPI made in municipal planning and service delivery.

Responses:

Municipalities are the cold face of service delivery. Being the sphere of government closest to ordinary citizens, municipalities play a critical role, contributing to the greater vision of the national government through the provision of basic services.

Municipalities are the first interface in terms of service delivery at city level. While there are a number of municipal functions, the municipalities are mandated and obligated to provide basic services to its citizens and businesses, and coordinate among different departments and avail help from the private sector to provide service delivery. The role is not just to provide service delivery but to see the sustainability of running the city effectively, efficiently and in a transparent way, involving good governance and public administration of urban management functions.

6.6.1.2 Theme 2: Municipal planning and requirements for service delivery

A question was posed to SAPI on their understanding on municipal planning processes, procedures and requirements in dealing with land development application processes. The question sought to establish whether SAPI understood how multifaceted municipal planning and service deliver is.

Response:

SPLUMA largely covers all and supersedes previous legislations.

6.6.1.3 Theme 3: Land use management shortcomings

In order to determine the effectiveness of land development processes, SAPI was asked: “What are the shortcomings in land development and land use management processes?”

Response:

Structuring good sustainable projects, attracting investments, transparency, and project management are a few of the shortcomings. Of the land parcels available within the cities, or what is required as per the IDPs, SDFs, and other plans, strategies and frameworks, the cities are unable to match and fill the gap between demand and supply. This largely impacts on a number of things in the overall municipal life cycle development process.

6.6.1.4 Theme 4: Applicable pieces of legislation

SAPI was asked how many pieces of legislation known to them, are involved in land development application processes. The objective of the question was to establish if the number of applicable pieces of legislation are acceptable where municipal planning is concerned.

Responses:

The response given was that in development control to development facilitation, the old legislation (which was not repealed by SPLUMA) tends to be restrictive and tedious. For example, the Provincial Transport legislation prevents a municipality from proceeding with a decision on an application, even though the comment required was not provided within the prescribed period. This creates conflict and contradictions in legislation, notwithstanding that the intention was good. Intergovernmental forums are best suited for such matters to be resolved. The breakthrough in the deadlock can be achieved by cities when such projects take the interests of all stakeholders into account.

6.6.1.5 Theme 5: Land reform

Under this theme, SAPI was asked when last the Institute had conducted a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other looking and the pre- and post-1996 legislation. The objective of the question was to determine the frequency of legislation assessment and reform.

Responses:

Most legislation is historic and outdated. With the change in focus in planning from development control to development facilitation, the old legislation (which was not repealed by SPLUMA) tends to be restrictive and tedious. For example, the Provincial Roads legislation prevents a municipality from proceeding with a decision on an application, even though the comment required was not provided within the prescribed period. This creates conflict and contradictions in legislation, notwithstanding that the intention was good.

6.6.1.6 Theme 6: Streamlining of processes

The question was asked to SAPI if the Institute considers streamlining processes to reduce the regulatory burden to municipalities. The question sought to determine the need and the willingness to reduce legislation and to streamline the related processes.

Responses:

- Planning and transportation legislation – leave for discrepancies and inefficiencies in the system.

- Planning and Environmental legislation – leave for duplication of processes, namely the requirement of provincial authorities to comment on environmental impact assessments, whereas the same function is also completed by local authorities, except where local authorities do not have adequate capacity.

Analysis:

The SAPI responses were similar to those of SALGA, indicating that there is a need to deal with duplication and discrepancies if government takes development and transformation seriously.

6.7 CATEGORY E: CONSULTANTS (PRIVATE SECTOR)

6.7.1 Unpacking responses

Category E deals with practical experiences of consultants working with municipalities on municipal planning matters. There were seven consulting firms that participated in this study. For the purpose of the analysis, no company names will be used. Questions were asked according to associated themes and all consultants were asked the same questions.

6.7.1.1 Theme 1: Role of the municipality towards service delivery

Under this theme, the consultants were asked about the role of the municipality towards service delivery. The objective of the question was to determine the level in which the private sector comprehend the municipality's responsibility towards service delivery.

Reponses:

The consultants saw the primary responsibilities of municipalities to be the following:

- To employ and ensure that the land use management system form an integral part of service delivery. These are in the form of having a holistic approach to service delivery through spatial depiction, land use management, spatial projection of growth and geographic information on ownership.
- To develop essential services for the rollout of development and to ensure that the policy environment is conducive to long-term sustainable development, with the necessary social services and work opportunities.
- To maintain and facilitate good, reliable services to end-users.
- To facilitate land development frameworks, including land uses and densities.
- To facilitate development applications in line with the land development frameworks.
- To fast-track land use applications that are in line with the land development framework.
- To stimulate economic activity and job creation.

- To ensure that the installation of bulk services to serve new developments is attended to timeously.
- To govern land uses and provide and maintain adequate roads, storm water, water, sewerage, electricity infrastructure and refuse removal, together with other public services such as the management of the development of the city, clinics, libraries, sports facilities, traffic regulation, public transport, maintenance of open space, regulating of outdoor advertising and emergency services. In order to do this, the city must implement a sound and fair billing system to gather the relevant funds.
- To ensure that services rendered are cost-effective, reliable and to the best interest of the residents of the city.
- To ensure that growth and densification take place, which are in turn linked to the political and socio-economic cross-sectoral priorities contained in the IDP and Growth and Development Strategy.
- To ensure that operational and capital budgets are linked to spatial SDF priorities.
- To employ a procurement process that is flexible and efficient enough to realise the project requirements outlined in plans with annual budgets and spend allocated budgets on asset acquisition, upgrading and maintenance.

To recruit competent people operating in effective institutions with sufficient capacity.

6.7.1.2 Theme 2: Municipal planning processes

Consultants were asked about their individual understanding of municipal planning processes, procedures and requirements in dealing with land development application processes. The question sought to assess the private sector's comprehension and experiences on municipal planning processes.

Responses:

The SPLUMA has empowered municipalities in that Chapter 6 calls for the formation of Municipal Planning Tribunals that are empowered to accept or reject land use applications. The land use or land development processes are as per the determination of the municipality and the adopted by-laws. The procedures are as determined by the type of applications submitted and determined on the magnitude of the submissions by a municipal official who has been mandated by the municipal council to do so. Clarity is still needed in terms of the alignment of authorisation as other pieces of legislation are either a national or provincial mandate.

Consultants further noted that there were pre-functional requirements that relate to administrative processes that are required to be undertaken and finalised prior to the application being considered. Many of these requirements fall outside of the municipal council ambit and are

delayed exponentially by the inability of provincial or other government institutions being able to prove meaningful inputs to enable the application to progress.

The municipal planning process must ensure that good planning principles are being met by drafting SDFs and evaluating land use applications. These processes must be transparent, development must be fast-tracked, public participation must take place and the welfare of the general public must be protected.

Consultants further mentioned that the municipal council must follow the guidance from the national and provincial legislation on planning and implementing planning processes and procedures to govern land development and usage in the city's municipal area. These processes and procedures must be clear and understandable to follow and must not demand unnecessary costs to be incurred. The processes and procedures must include strategic and regulatory planning policies.

Some consultants felt that change may not be easy as the private sector got used to old-order legislation such as the Gauteng Town planning and township ordinance. However, with the enactment of SPLUMA, especially section 53, the private sector is unsure of what to do as there are no uniform by-laws in place; thus, the transition is not smooth.

The consultants further demonstrated their comprehension of the municipal planning process by acknowledging that planning processes are complex and cumbersome, forcing planners not to think but making people compliant. There is a need for flexibility and discretion to the municipality. The Constitutional Court, through five recent decisions, has confirmed that municipal planning as defined in the Constitution is a local government function. Municipal planning has two components that support and relate to each other. The one is spatial planning and the other is land use planning.

The primary tool and related procedure, with its associated requirements, is the SDF which each municipality is supposed to have. The other tool is local area plans which are being interpreted as precinct plans and can be defined by the municipality where a need is determined. Land use planning is meant to contribute to realisation of the SDF through the assessment and realisation of development applications.

The key process and procedure, and requirements related to land use management, consider the assessment of the development application and include the definition and implementation of municipal land use planning specific to the municipality through planning by-laws; the preparation of a single land use management scheme for the municipal jurisdiction; the establishment of a municipal tribunal and an appeals tribunal to consider disputes; the mechanisms and processes

to realise development control; and the process to negotiate and ensure the provision of municipal services from existing or new networks.

6.7.1.3 Theme 3: Legislative review and streamlining of processes

How many times have municipalities revised applicable policies and legislation used to determine and decide on land development application (service agreement, bulk contribution policies)? This question was asked to all participating consultants in order to determine the frequency of legislation assessment, reform and the need to rationalise the related processes, to determine the shortcomings thereof.

Responses:

There is a need to streamline processes but such can be guided by a comprehensive legislation review. Development in general is very regulated and due to the myriad of legislative processes that one need to jump through to get an approval, and by the time that the application is approved, the feasibility is no longer valid and the market trends in many instances has changed. It is also very cumbersome and time-consuming to make changes to development applications with no leeway by officials, who are now bound by the Promotion of Administrative Justice Act (3 of 2000) (Parliament, High Level Panel, 2017).

Currently, applications are being approved in terms of legislative requirements and no long-term planning inputs. The process is over-regulated and does not make provision for simpler submissions. One of the legal experts mentioned that depending on the type of land use, there are over 100 pieces of legislation that can affect land development transactions, excluding the by-laws, thus consistency and uniformity are needed in terms of SPLUMA.

Various legislation prohibits the fast and effective approval of land use applications (excisions, division of agricultural land). It was mentioned that there are direct and indirect legislation that affect a land development application, namely:

Directly:

- Spatial Planning and Land Use Management Act (16 of 2013)
- Town-Planning and Townships Ordinance (15 of 1986)
- Gauteng Removal of Restrictions Act (3 of 1996)
- Division of Land Ordinance (20 of 1986)
- Less Formal Township Establishment Act (113 of 1991)
- Physical Planning Act (125 of 1991)
- Black Communities Development Act (4 of 1984)
- Agricultural Holdings (Transvaal) Registration Act (22 of 1919)

- Subdivision of Agricultural Land Act (70 of 1970)

- **Indirectly:**
  - Gauteng Transport Infrastructure Act (8 of 2001)
  - Local Government: Municipal Finance Management Act (56 of 2003)
  - National Environmental Management Act (107 of 1998)
  - Geoscience Act (100 of 1993)

Each legislation has its own requirements. This is challenging to municipalities as currently there is lack of coordination between departments in the municipal council, poor financial planning with regard to the provision of bulk infrastructure for which the municipal council is responsible to allow the implementation of the development policies and shortage of suitably qualified personnel.

6.7.1.4 Theme 4: Turnaround times

Is the turnaround time acceptable to the municipality and the public in terms of development, and what are the legal implications? The question was asked to consultants to determine how legislative time frames from different pieces of legislation impact on municipal planning processes.

Responses:

Consultants generally felt there are delays due to different aspects such as rendering comments way outside the statutory time frames. The processes tend to be heavily delayed due to the lack of integration between government departments and legislative frameworks. The Ordinance, for example, allows for a 60-day comments period, meanwhile one would have an application which could in essence be finalised in a much shorter time frame if discussed around the table. Exemption processes should be considered, such as exemption from lengthy circulation processes.

For example, land use applications where delayed as much as five years for excisions of land in Mpumalanga, and two years as a result of satisfying other requirements of the Subdivision of Agricultural Land Act. The South African Postal Services, the Government Printer, Deeds Office, Surveyor-General, Department of Agriculture, Department of Mineral Resources, Gauteng Department of Agriculture and Environment, Gautrans Roads Department, Provincial Heritage Resources Authority for Gauteng, Gauteng Provincial Department, Government of Economic Development, Eskom, South African National Roads Agency and Department of Water, Forestry and Fisheries can frustrate the proses through unnecessary delays in providing comments or approvals.

The approval of applications is delayed as municipal council decisions are postponed until comments are on file. Submission of general plans are delayed; the issuing of Section 101 is delayed as pre-proclamation conditions must be met. The time it takes to get a section 103 can be a problem; the time to get the deed can be a problem. Thus, it means the entire development application value system is inefficient.

6.7.1.5 Theme 5: Efficiency and value capture

What are the cost implications of these multiple pieces of legislation applicable to municipal planning processes? The question was asked to establish the financial extent to which multiple applicable pieces of legislation can impact on service delivery, growth and development of the municipality.

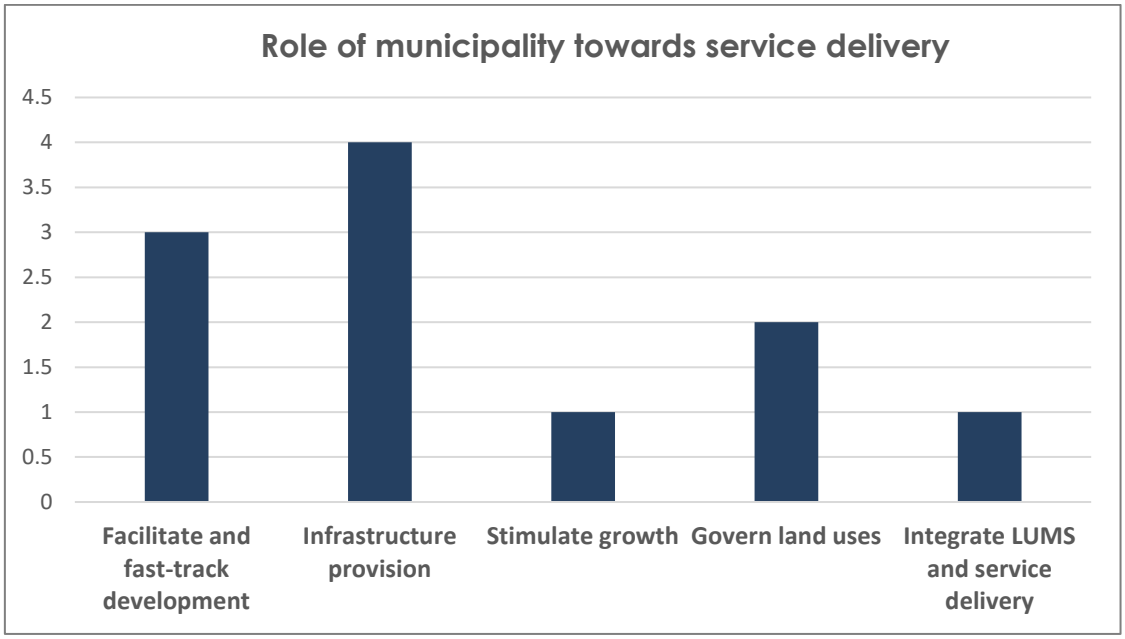
Responses:

The consultants generally agreed that delays in land development application processes have dire financial consequences. The financial implication affects developers, municipalities and communities as end-users. Thus, it means that the people who suffer more are the communities as they have to pay for escalated interest in one form or the other. For example, when a municipality delays in decision-making, or government delays in rendering comments, houses, offices, shops, and factories cost more as interest is added to the purchase price. Only the banks benefit as they make more money out of the interest. Sellers of property do not get their money.

Future projects are delayed as the lack of inflow of money prevents the purchasing of new properties by developers. All participants in the development process in the private sector suffer as they do not get paid unless milestones are reached; the delay in proclamation of township establishment also delays rates and taxes being generated as an income for the municipal council.

The consultants indicated that financial implications are dire in dealing with agricultural holdings of 1990 and other related pieces of legislation. Development and growth are negatively impacted upon and create shaky markets, slow economic growth and high levels of unemployment. This response does not in any way suggest that the protection of agriculture is least important. It refers to the relevance of the Act in its current form.

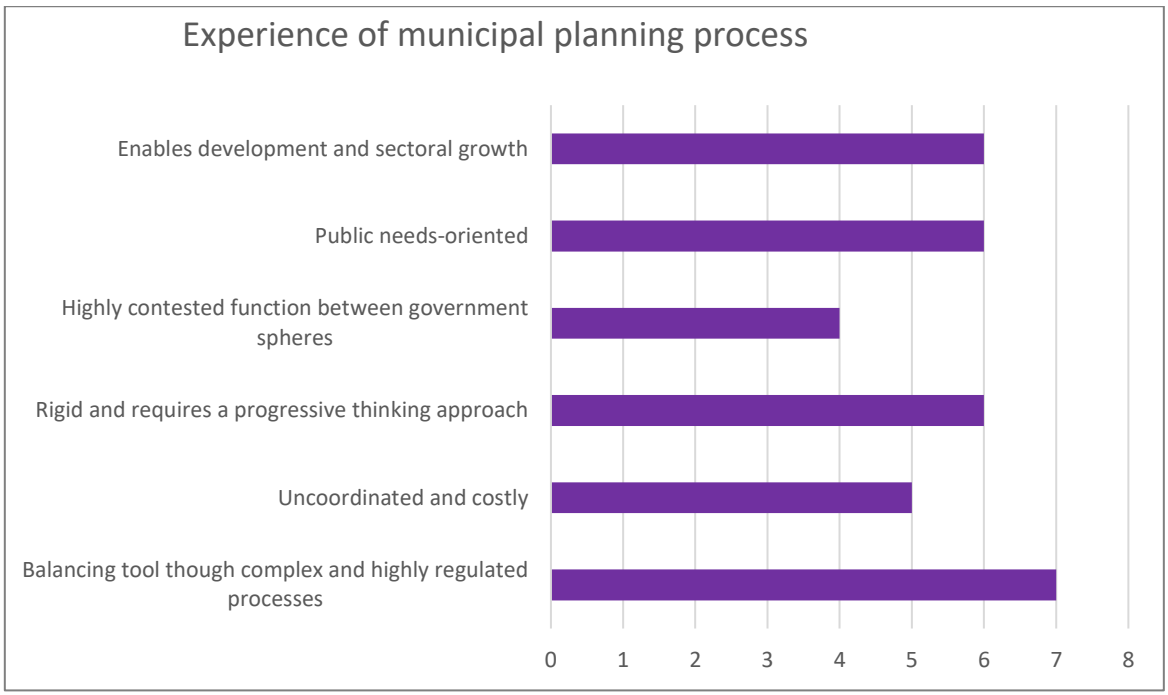
6.7.2 Graphing private sector responses



Graph 6.11: Understanding the role of a municipality towards service delivery.

Source: Own construction (2019)

The above graph illustrates more experiences than perceptions of consultants who are involved in municipal planning. A high number of participants responded by stating that the role of a municipality is to facilitate and fast track development as well as to provide infrastructure. Municipalities, through an integrated land use management system, governs land uses in order to stimulate growth and render services. This graph is an indication that municipalities are playing are implementation agent for government. The strategies of government on growth and development has been shown to rest heavily on municipalities.

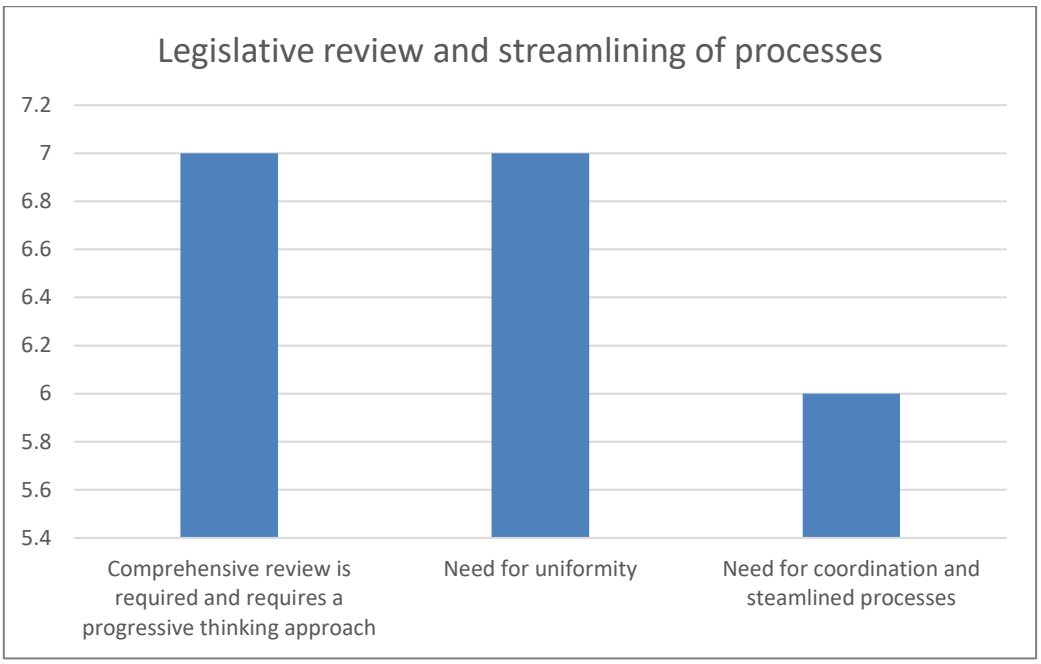


Graph 6.12: Experience of municipal planning processes

Source: Own construction (2019)

Consultants' views as represented in this graph above, indicate that municipal planning is an important function to achieve the transformative agenda of government. Through municipal planning processes, consultants can attest that development and sectoral grow are possible. Municipal planning is structured around people's needs, yet complex, highly regulated, highly contested, rigid, uncoordinated and costly. Thus, it requires a progressive thinking approach to be effectively executed.

Graph 6.13 deals with solutions needed for effective municipal planning. Comprehensive review, progressive thinking and need for uniformity were ranked high as requirements for effective municipal planning and service delivery. This graph is to a greater extent proof that the hypothesis is correct. There is a need for coordination and streamlined processes found in various pieces of legislation applicable to municipal planning.

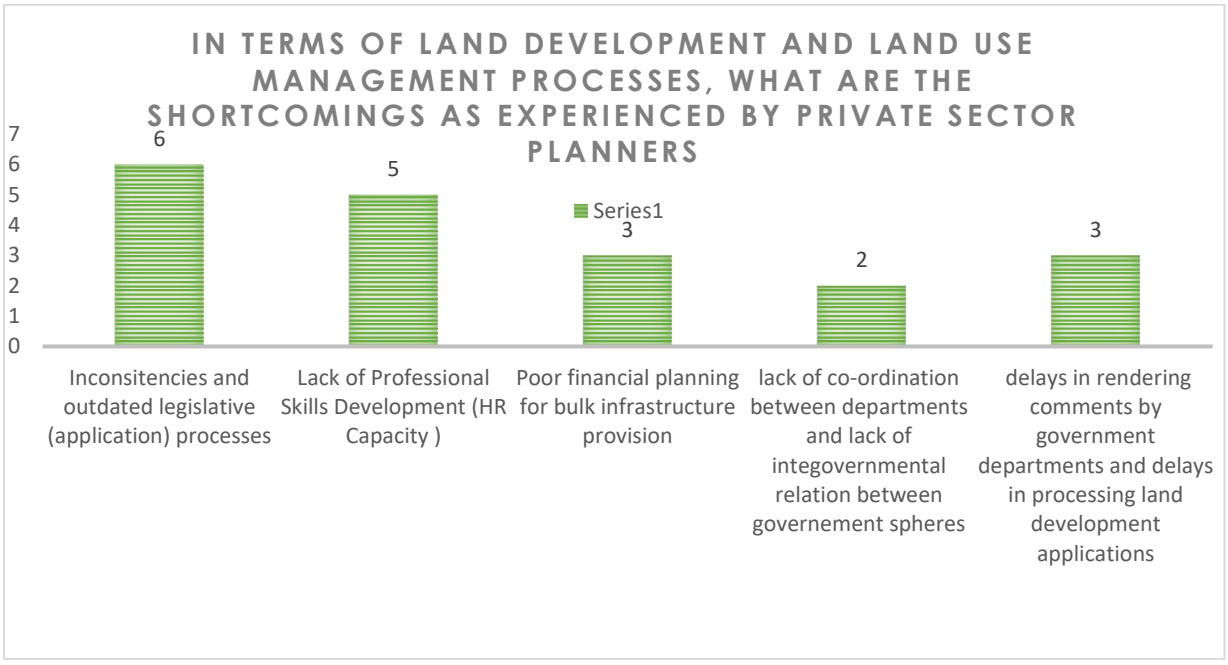


Graph 6.13: Legislation review and streamlining of processes

Source: Own construction (2019)

Graph 6.14: Shortcomings of the land use management processes

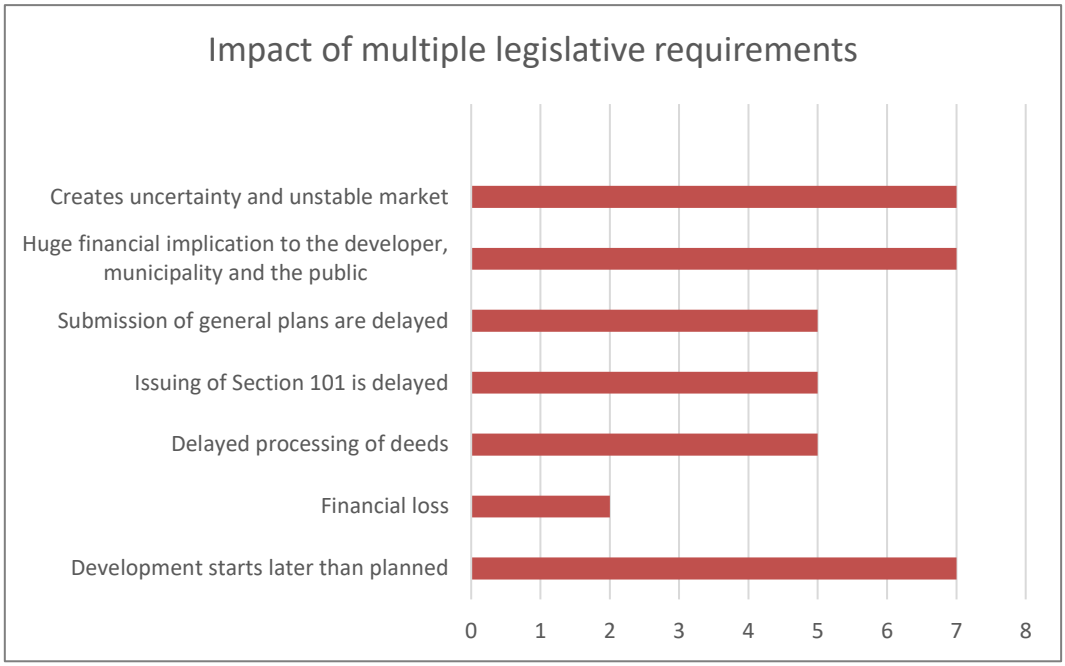
6.14 shows the responses to challenges associated with land development and land use management processes.



Graph 6.14: Shortcomings of the land use management processes

Source: Own construction (2019)

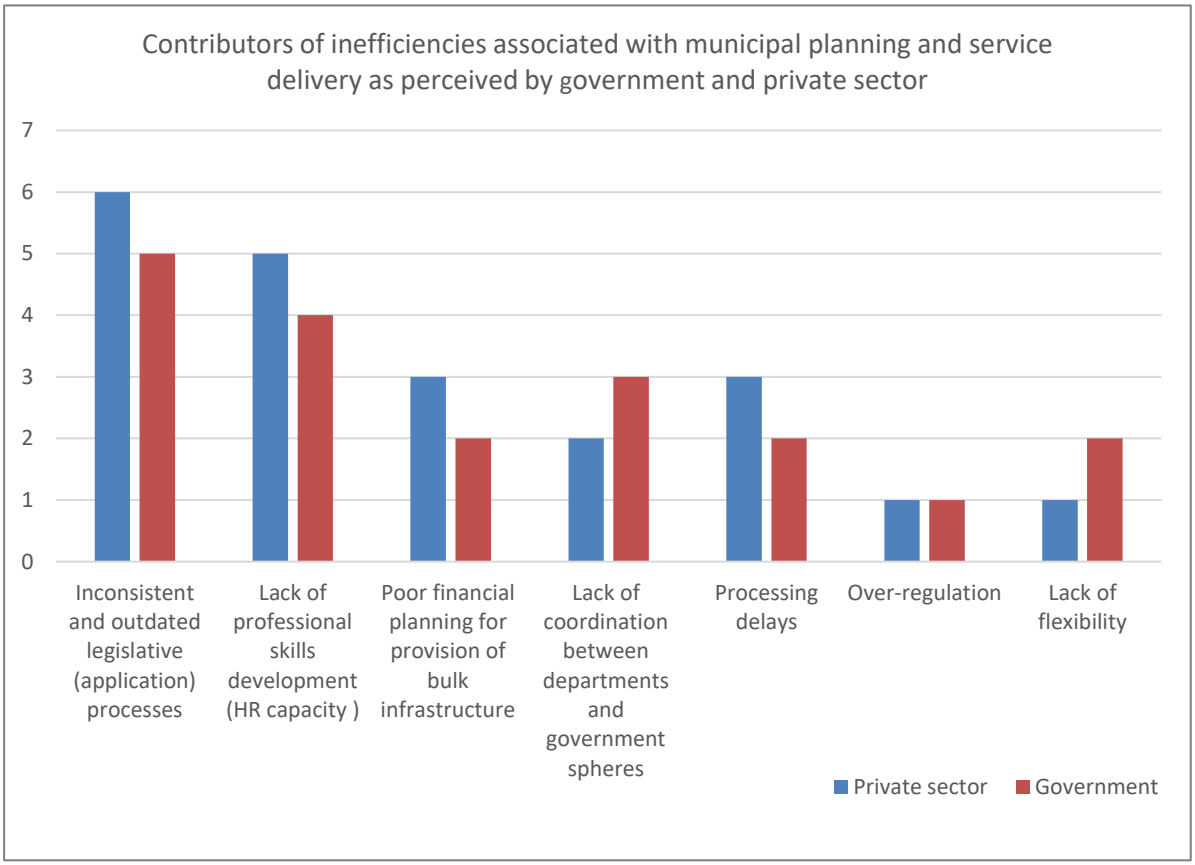
Inconsistencies and outdated legislative processes were found to be the biggest challenge. However, lack of professional skills development surfaced as a shortcoming in the development of land use management. An interesting finding that came out clearly is poor financial planning for provision of bulk infrastructure. Lack of coordination between departments and government spheres and delays in processing land development applications have also repeated as a concern in this graph. The graph further shows that key elements that are essential for effective service delivery and municipal planning are not catered for posing as shortcomings in the entire development and land use management system.



Graph 6.15: Efficiency and value capture

Source: Own construction (2019)

The graph deals with the impact that multiple legislative requirements have on municipal planning, primarily on efficiency and value capture related to development. It has been demonstrated unanimously by consultants that multiple legislative requirements create uncertainty and unstable markets due to various activities that get delayed as a result of satisfying multiple legislative requirements. Submission of general plans, issuing of section 101 of the Gauteng town planning and township ordinance is delayed. Thus, development is forced to start later than initially planned and such has huge financial implications for the developer, municipality and the general public.



Graph 6.16: Reflections toward effective and efficient municipal planning and service delivery

Source: Own construction (2019)

The graph portrays municipal planning processes in distress, rendering the local government incompetent in dealing with municipal planning and service delivery matters. The transformative agenda as contained in the NDP, the municipal SDF, the global distribution system and various legislation is threatened by the level of inadequacies as demonstrated by government and the private sector.

The subsequent section deals with comprehensive analysis of all responses. In order to make sense of the findings, a cross-case analysis, a descriptive and explanatory research design will be used to enable the formulation of recommendations contributing to the new body of knowledge relevant in urban and regional planning. To strengthen the empirical research, cross-case analysis and descriptive and explanatory research are defined in the following subsections.

6.8 COMPREHENSIVE ANALYSIS OF FINDINGS

6.8.1 Cross-case analysis

Cross-case analysis is a research method that facilitates the comparison of commonalities and differences in events, activities and processes that are the units of analysis in case studies (Khan & Van Wynsberghe, 2008:2). In line with the principles of validity and reliability mentioned in Chapter 2, an integrated approach looking at the responses, literature evidence and the viewpoint of the scholar, will be employed. Synthesis and interpretation of data played an important role in bringing meaning and implication to this study. Accordingly, a cross-case analysis method is fundamental in providing a thorough analysis of findings.

Thus, analysing findings using a cross-case analysis is befitting as multiple responses were received from different participants, being the three case study municipalities, the national and provincial government and private sector responses. The cross-case analysis is possible as participants were responding to the same theme and questions, with the exception of one financial question that was asked only to the consultants as they are the profit-driven sector.

6.8.2 Descriptive and explanatory research

Descriptive research provides answers to the what, where, when and how questions, while explanatory studies address the questions of why (Babbie, 2014:96). This becomes relevant to this chapter as questions that were posed to participants were descriptive in nature and at the same time allowed explanations based on literature and experience on municipal planning and service delivery matters.

6.8.3 Observed evidence of the study

This study has established a number of areas that placed government structures into disarray. The empirical evidence concentrated on legislative knowledge and compliance; inefficiencies in processing land development applications; and the role of the national and provincial sphere of government in municipal planning.

6.8.3.1 Legislative knowledge and compliance

All participants demonstrated a reasonable knowledge of the role of municipalities where land development and municipal planning is concerned. A fair knowledge of instruments and laws essential to service delivery was mentioned by all participants. Respondents were in agreement that municipal planning is a constitutional mandate and is highly regulated. Municipalities furthermore conceded that although municipal planning and service delivery is the competency of municipalities, the national and provincial spheres of government have a role to play. The same

sentiment was shared by the rest of the participants, including the provincial and national departments.

With regard to municipal planning processes and the land development application value chain, it was mentioned that when determining and deciding on a land development application, legislative requirement as provided for, must be adhered to. It was also demonstrated that the requirements from each piece of legislation may prolong a decision-making ability of the municipality. Municipalities collectively indicated that there are pieces of legislation that can be repealed and there are legislative processes that can be integrated or streamlined to ensure that municipal planning is effective. Some legislative requirements are found to be repetitions, for example, the public participation that is required by each legislation for a particular land use. An application for a filling station normally involves more than three pieces of legislation. Each piece of legislation has a public participation component, normally giving the public 28 to 30 days to render comments. If the public participation processes are not done simultaneously but sequentially, it means for those public participation months, a decision cannot be made and the public is forced to comment more than three times on a proposed filling station. Such multiple public participation for a single land use application becomes tedious and time-consuming, given the fact that the public participation is done to obtain comments from the community or interested and affected parties of where the land use is to take place.

The delay as mentioned above, is not only tedious but is cost-ineffective. While public participation takes place in an incoherent manner, the financial institutions are charging interest to the loan which has a crippling effect to the prospective filling station owner. This may then result in fewer job opportunities when the filling station is finally in operation. The same argument can be applied for the cost of providing houses for human settlements and various infrastructural assets by government or private developers. For example, when the municipality seeks to provide houses for human settlement purposes, it will appoint a service provider through supply chain processes. One of the requirements is that the service provider must be able to render services as per the bid specifications. This means the service provider must have some capital muscle to carry the project from start to finish and the municipality can only pay the service provider for the services once deliverables are produced.

From the legislation reform and harmonisation point of view, all participants agreed that there has not been a vigorous legislative review process to reform or harmonise pieces of legislation that have an impact municipal planning. Instead, both the provincial and national sphere of government continuously develop and pass new pieces of legislation. The responses indicated that there is a need for government to undertake a legislative review process to assess relevance

of applicable legislation in order to meet its transformative and developmental agenda that will see the country yield the much-needed economic growth, development and job creation.

The legislation assessment process must identify pieces of legislation that can be harmonised and processes streamlined and integrated to permit expedited informed decision-making. The Report of the High-Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change (2017:463) submitted in support that there is a need to ensure that the regulatory procedures for various related planning authorities, as mentioned, are aligned and integrated into a single approval system to avoid overlap and unnecessary duplication, causing excessive delays and compliance costs.

There are areas in which policymaking proceeds without a clear governing framework that supplies the goal and objectives that law and policy should pursue, as stated in the Report of the High-Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change (2017:511). Thus, to ensure that before any legislation is developed and passed, an assessment report that details the need and relevance of the legislation and how it differs from or integrates with other existing pieces of legislation, must be produced. The assessment report should indicate processes and procedures that can be integrated to avoid duplication and inefficiencies.

With regard to legislative compliance, it was found that participants, excluding the national and provincial spheres of government, contended that legislative time frames for commenting must be adhered to, especially when national and provincial departments are legislatively required to render comments prior to the municipality's final decision. In this aspect, municipalities and consultants mentioned several times that most delays in land development application processes emanate from the lack of national and provincial spheres of government rendering comments with statutory time frames. Some departments were mentioned to give comments after two to five years instead of the legislated 60-days period.

The non-commenting by officials can be regarded as legislative non-compliance. Legislative non-compliance causes land development applications not to be concluded. From the private sector or consultancy point of view this has financial consequences as the developer or consultant will not be able to service the loan made from the financial institution, and as a result, most firms become bankrupt, resulting again in job losses. The same financial loss can be argued to be much felt by the state when government driven projects are not concluded accordingly. The Auditor-General's Column (2011:1) states that public confidence in government is paramount and can only be strengthened if leaders and officials within the public sector carry out their duties legally, effectively, efficiently, economically and, most importantly, in accordance with the rules and regulations.

6.8.3.2 Inefficiencies in processing land development applications

The responses revealed that there are a number of factors other than legislative non-compliance that add to the slow pace in determining and deciding on land development applications. These factors are summarised as follows:

- Incomplete land development application, for example, no bond holder's consent and no title deed submitted by consultants.
- Incorrect advertising processes or producing proof of adverts.
- Content errors relating to legislation referencing and motivational memorandum.
- Incorrect site development plans.
- Delays in responding to requested information to enable decision-making.
- Inadequate or ambiguous comments rendered by relevant departments.
- Lack of an integrated and systematic land development application tracking system.
- Poor communication between government officials and consultants.
- Poor communication and inability of decision-makers to take certain decisions.
- Unclear system of delegations.
- Ineffective land use management system and the land development application value chain.
- Inability to decisively interpret policies and strategies informing land uses.
- Inconsistencies between municipal spatial policies, infrastructure plans and land use scheme that hinder decision-making.
- Lack of human and intellectual capacity within departments essential to the development application value chain.
- Poor filing system from municipalities and lapse of institutional memory.
- Delays due to negotiation towards payable bulk contributions, leading to submission of services appeal to the municipal appeals authority.
- Lack of internal arrangement and shared functions, monopolising certain duties to specific individuals. This create an institution that is person depended to an extent that when one official is on leave, work cannot be performed by another person.
- Ambiguous and rigid job descriptions on work performed by officials per department.
- Disconnect between management and officials at operational level.
- Lack of clear procedural guidelines indicating clear requirements for submitting land development applications.
- Fettered discretion on requirements and processes.
- Lack of integrated planning approach for projects.

- Lack of systematic, coordinated and integrated planning systems among the three spheres of government on projects related to service delivery.
- Unavailability of top management to support line manager's decision-making where there is a deadlock in ideologies.

In light of the above shortcomings, a double graph is used to summarise data from multiple groups. For ease of reference groups, responses from the national, provincial and local government, as well as state organs, are grouped as one group called government. The second group is data that comes from the provider sector. Thus, the double graph shows responses from government and the private sector. The intention is to make the data readable, easily interpreted and understood, as Wallgren *et al.* (1996:6) stated: "a chart says more than a thousand table cells". The double chart depicts the high and the low-ranking factors contributing to inefficiencies in processing land development applications by municipalities. In this ranking, responses from government and the private sector were combined and analysed as such in order to demonstrate the experiences of each sector.

6.8.3.3 National and provincial role in municipal planning

With regard to monitoring, evaluation and support, all participants responded that the national and provincial spheres must play their role in providing support to municipalities. This means that the national and provincial spheres must be able to support municipalities in terms of capacity building by looking at human, financial and intellectual capacity. Importantly, the respondents indicated that such support can only take place if national and provincial governments fully comprehend the regulatory nature of municipal planning processes and how they are linked with the economic model of the country.

The responses from participants revealed that there is a huge part that the national and provincial spheres of government can play to increase efficiency and service delivery. This concession is again supported by the Auditor-General's Column (2011:1) stating that to ensure effective implementation, once policies and procedures of individual institutions are aligned with legislation, an important proactive measure is to train officials to enable them to understand their roles and responsibilities, and these incorporate compliance as part of the daily routine of activities.

It is evident that municipal planning is the backbone for growth and development in the country. It is a function that can directly and indirectly realise the provisions of Chapter 2 of the Constitution. Through municipal planning, government can be able to meet transformation and redress the social, spatial and economic imbalances of the past. It is a tool to reconstruct and positively develop an economic and social sustainable nation that can globally compete successfully.

6.8.3.4 Legislation review and law reform

Municipal planning, though not defined in the Constitution, has been generally associated with legal procedures such as rezoning, township establishment and consent use. Municipal planning, however, is not only about land development application procedures. It is a municipal function that is multidimensional and entwined with provincial and national spheres of government through various legal and strategic apparatus. Its expression is made complete through a land development application value chain operating within an effective land use management system.

Municipal planning is a form of government intervention to achieve strategic public policy objectives. This intervention is articulated through legal rules and processes governing the use and management of land (Gurran *et al.*, 2008:18).

When the spheres of government are not working together to rethink the manner in which legislation is drafted and implemented, such gap may have severe consequences to the ability of municipalities in performing their constitutional mandate. Lack of legislative review not only creates inconsistencies but it creates uncertainties, making municipalities irrelevant and not conducive to attract investment opportunities. The president of the RSA has been quoted in the Framework for Strategic Plans and Annual Performance Plans (2010:5), as saying that:

> *[G]overnment's approach to planning and programming of activities is likely to impact on the budget process in various ways. Thus, the need for government to change its tactic, with a particular focus on the achievement of expected results associated with improvement in the lives of South Africans.*

The Report of the High-Level Panel on the Assessment of Key Legislation and Acceleration of Fundamental Change (2017:33) provides a supplementary view, stating that despite the NDP and SPLUMA, the legacy of spatial inequality appears intractable. Therefore, an integrated solution that goes beyond the mandate of any one government department is needed. There is a need to reduce red tape in the approval processes by consolidating the four separate approval processes for environment, heritage, water use and land use planning. Such will assist with expediting development considerably.

The responses consistently indicated that an effective municipal planning process can promote and stimulate equitable functional markets as provision of a road or a house has more benefit to different sectors. Provision of roads provide accessibility and integration which enable movement of goods and services. The same road can provide the creation of multiple jobs in different sectors, while the provision of houses provides a sense of dignity, ownership and self-sustenance. Therefore, municipal planning cannot be seen as the approval of land development applications, but rather be accepted as a vehicle that unlocks and enables fiscal base, social cohesion, balanced protection of the environment and agriculture for food security. When there are

inefficiencies in the land development application value chain, proper planning and accountability cease to exist, causing poor provision of services and slow economic growth.

The researcher found that the responses from the national sphere demonstrate that departments or ministries still plan and legislate in isolation, looking at their individual constitutional mandate. There was no response given that indicates that an integrated approach is being explored, especially on matters affecting municipal planning.

When asked about known pieces of legislation applicable to municipal planning, the national departments mostly mentioned the legislation they administer. This means national departments may not fully know how many pieces of legislation there are that regulate municipal planning, or how many each land development application must satisfy before a decision can be granted. Hence, when developing legislation, no department has done a comprehensive legislation assessment exercise to determine how the proposed legislation fits in or may impact on other applicable legislation regulating the overall function of local government. It is a known fact that though legislation is drafted and passed at the national or provincial sphere, its successful implementation needs to be realised by local government. Thus, it is only befitting to ensure that legislation does not hamper the ability of municipalities to plan and render services.

On the other hand, the responses highlighted that national departments have a clear knowledge of their individual responsibilities to evaluate and monitor local government's performance in various aspects as guided by different pieces of legislation. The responses furthermore showed that over and above the absence of legislative reform to harmonise, streamline or integrate processes, government strategies and intervention used to evaluate and monitor performance, are not coordinated and aligned.

As mentioned by the consultants, there are cost implications associated with the land development application value chain. This means costs affect consultants and developers differently than for government. Gurran *et al.* (2008: 5, 18 and 71) believe that fees and charges are direct costs for planning services, where some costs are payable regardless of the land development application outcome, posing financial risks to developers or consultants.

Cumulative costs, if too high, might have a negative implication to a number of factors which may include attracting and retaining developers willing to invest. Regulations, when vague, rigid and inconsistent in the development process, create development, such as housing supply, to be unresponsive to the changing market circumstances (Barker, 2009; Evans, 2004) as cited by Goodman *et al.* (2010:6). Another aspect for consideration is delays in decision-making that deter investors from entering the market. Goodman *et al.* (2010:6) furthermore mentioned (Evans, 2004; Guran *et al.*, 2010) when stating that delays in the land development application process create an environment full of instability and uncertainty Green *et al.* (2016:1), adding to the

discussion, state that long and uncertain approval timelines are particularly detrimental to the manner in which supply to human settlements responds to the demand, as the data used indicated that Canada would have seen substantial growth if land use regulations were looser and less costly.

Deductive reasoning suggests when there are material defects in government relating to existing irrelevant and outdated legislation, multiple competing processes and legal requirements, as well as legislative non-compliant municipalities are rendered incompetent to perform their constitutional duties. In order to restore the municipality's ability to render services, government must undertake a comprehensive legislative review exercise to assess all legislation that have an impact on municipal planning.

Legislation reviews have been mentioned by participants in this study as discussed above. When a thorough impact assessment is done, it will be possible to produce relevant and better regulations that can guarantee informed rule of law that is necessary in achieving service delivery. The Planning Law Assessment Framework (UN-Habitat, 2018:16) warns that as countries contend with urbanisation and challenges, law forms part of urban development and management.

Therefore, countries tend to come up with new laws, amend existing ones or consolidate different laws in one main piece of legislation. The challenge in creating new laws and amending existing once may have a detrimental effect on the clarity of legal provision whereby a new legislation may be passed without repealing the previous act, creating inconsistencies or alternatives, or parallel mechanisms on a particular matter.

The guidelines for Impact Assessment in Legislative Drafting (Ministry of Justice, Finland, 2008:9) state that an impact assessment is done:

> to deliver information to the decision-maker on the effects of various regulatory options at hand [and their consequences] ... The assessment of the impact of Acts and other provisions is an essential foundation for policymaking, promoting the achievement of the societal aim of regulation.

Thus, legislation assessment should be seen as an inherent element of the regulatory process. When a legislation impact assessment is commissioned it must clearly articulate the intended effect and associated benefit. Thus, it should look at the following:

- National and provincial pieces of legislation that have a direct and indirect impact on municipal planning processes. This will require an in-depth understanding of what constitute municipal planning, the land use management system and land development value chain. Additionally, to understand the connection between municipal planning and service delivery.

- The interphase with other laws that are connected with municipal planning, but deal with development of infrastructural assets, economic growth, spatial and social transformation, environmental protection and public administration at large.
- Administrative and legal procedures, processes and requirements that can be integrated or streamlined to reduce delays and unreasonable costs.
- Laws that deal with the government budgeting and financing system to ensure integration and balanced division of resources.
- Institutional arrangement which deals with inter-authority relationships insofar as competences and division of duties are concerned.

The legislation impact assessment must be done with the objective of transforming local government ensuring improved service delivery, increased economic growth and development, employment, competitiveness as well as fostering social welfare as provided for by the Bill of Rights.

The Planning Law Assessment Framework (UN-Habitat, 2018:14) states that specific local realities must be recognised for the law's objective to be framed in a manner that addresses them. The importance of alignment cannot be overstated. The Planning Law Assessment Framework (UN-Habitat, 2018:12) further emphasises that quality law provides predictability and order in urban development such as promoting spatial, societal, economic and environmental perspectives. The legislative impact assessment must deal with issues of monitoring and evaluation to ensure quality, by ensuring consistency, transparency, efficiency, efficacy and capacity for implementation.

6.8.3.5 Monitoring and evaluation

Chen (2009:8) describes monitoring and evaluation as an important management tool in urban planning that have great potential to assist many planning practices and should be carried out during the whole process of planning, preparation and implementation. The monitoring speaks to a continuous evaluation of activities in policies, processes, and plans. With the Framework for Strategic Plans and Annual Performance Plans (2010:3) contending that "there is an inherent tension between strategic planning and budgeting, which often makes it difficult to achieve the desired level of integration", that would improve operational effectiveness within the spheres of government.

The researcher, taking cognisance of the responses given above, submits that the Department of Planning, Monitoring and Evaluation should consider developing a comprehensive, coordinated and integrated Compliance and Evaluation Framework that take cognisance of legislative provisions to be performed and complied with by all three spheres of government. The proposed

framework should be comprehensive, practical and measurable, thus linking and strengthening the Government Monitoring and Evaluation System.

The Compliance and Evaluation Framework should be an interlocking tool centred on municipal planning and service delivery; thus, forcing integrated and systematic planning and budgeting processes by all spheres of government. For example, when the Department of Health needs to construct clinics or hospitals within a particular year, municipalities must have such information and planning process in place and coordinated to ensure there are no delays or non-legislative compliance.

Another suggestion from a service delivery point of view is to consider the provision of section 2 of the Infrastructure Development Act, read with SPLUMA, that the development of a National Integrated Infrastructure Provision Plan is managed as a long-term programme, where infrastructural needs to be rendered across the country are done through a set criterion captured, analysed, prioritised and budgeted for.

The National Integrated Infrastructure Provision Plan must be managed through a National Infrastructure Repository System that will scientifically prioritise projects according to their profile and indicate if the project falls within the short- to long-term implementation calendar. Each provincial sphere will have access to see projects to be undertaken by municipalities within the province. Municipalities, with the support of the province, must take all short- and medium-term projects and incorporate them into the IDP for joint implementation. The system must be able to give an accurate project status account. The National Integrated Infrastructure Provision Plan, together with the National Infrastructure Repository System, will be a national programme developed and managed as an intervention to improve planning, budgeting and implementation in order to accelerate infrastructure provision, economic growth and service delivery.

Young (2007:17) states that programme management is the utilisation of project management and its inherent processes to manage a collection of closely interdependent projects in a controlled and structured manner to achieve some clearly defined objectives identified as strategic needs. Therefore, if Young’s philosophy is accepted, all other infrastructure plans or initiatives that exist within government should be, where necessary, consolidated and incorporated into the National Infrastructure Repository System to enable strategic implementation. The programme, when adopted, will allow government to work together as intended by Chapter 3 of the Constitution and may call for government to relook into the manner in which distribution and allocation of revenue is done. Importantly, each sphere of government will be part of the municipal planning processes in understanding the land development application value chain.

6.8.3.6 Effective and efficient processes and procedure

Participants strongly highlighted time delays in land development application decision-making. Deductive analysis of responses indicates flaws in the land development application value chain. The inefficiencies can be attributed to various services as mentioned in section 6.3.3.

For an effective land development application process, government officials and the public must understand the development cycle of any project. The life cycle for any development project cannot be legal if developmental rights are not in place. The decision-making body must know that with any land development application there are time and cost implications. Thus, balancing legislative compliance with cost benefits becomes key to service delivery.

It is the researcher's opinion that municipalities must strive to reduce delays in determining and deciding on land development applications. SPLUMA provides for the development of by-laws. A by-law is a legal vehicle that can stipulate realistic and shortened time frames for land development applications. The researcher further suggests that intergovernmental relations be strengthened to ensure that national and provincial departments comment within the statutory time frames. Where a department has failed to comment, the relevant member of the executive council or the director-general be alerted. Failing to receive positive intervention, the municipality must then determine and decide on a land development application especially where land development applications is essential to government development agenda.

Furthermore, municipalities must refrain from receiving legally incomplete land development applications from developers and consultants as this distort the performance of the municipality in determining land development applications within the required time frame as captured in the Standard Operation Procedure and Service Delivery and Budget Implementation Plan.

6.8.3.7 Capacity-building – A balance between regulation and service delivery

The study findings indicated that capacitation in all three spheres of government is much needed. Capacity building should not be tailor-made to the specific sphere but should rather deal with the role of government as a whole, indicating attributes that connect government with municipal planning and service delivery. It is not accurate that national government does not have a direct role to play in municipal planning matters. This calls for government to unpack its functions to be considered directly or indirectly in municipal planning matters.

In terms of Chapter 10 of the Constitution, every sphere of government, including local government, "must be governed by the democratic values and principles enshrined in the Constitution". Section 195(1) of the Constitution stipulates as follows:

a. A high standard of professional ethics must be promoted and maintained.

b. Efficient, economic and effective use of resources must be promoted.

c. Public administration must be development oriented.

d. Services must be provided impartially, fairly, equitably and without bias.

e. People's needs must be responded to, and the public must be encouraged to participate in policy-making.

f. Public administration must be accountable.

g. Transparency must be fostered by providing the public with timely, accessible and accurate information.

h. Good human-resource management and career-development practices, to maximise human potential, must be cultivated.

Based on the above principles, appropriate governance capacity lies in the quality of local policy cultures. When such policies are well integrated, connected and well informed, then opportunities can be captured and local conditions enhanced (Healey, 2003:104). It was mentioned through the data gathering that delays in decision-making can be attributed to lack of capacity. Capacity in this study deals with the intellectual ability to understand and interpret applicable laws. It also deals with the availability of qualified planners within the municipality to deal with municipal planning matters. It should not be construed that municipal planning requires only planners as it requires a wide spectrum of knowledge. For the purpose of this research, urban and regional planners become a key subject for discussion.

6.8.3.8 Human and intellectual capacity

Intellectual capacity in this study means the ability to read, understand, interpret, analyse and implement applicable laws for decision-making and service delivery purposes. It also deals with the ability to adopt to unforeseen developmental changes and be able to use minimum resources to cater for wider developmental needs. Cloete and de Coning (2011:148) and Cloete *et al.* (2006:320-330) affirmed that policy implementers should gain knowledge as they progress through different implementation stages. Another form of intellectual capacity involves training, provision of practical and simple material to read and comprehend technical support systems, including sharing of resources and skills transfer (Boshoff, 2008:107-108). Barker and Angelopulo (2006:45) assert that the intellectual capacity involves the ability of officials to effectively translate strategies into the operational requirements of their divisions and to know and understand how the work done by their divisions contributes to the delivery of the organisation's services or products.

Human resource capacity in this study refers to the availability of qualified functionaries to perform municipal planning functions. Jones and George (2004) suggest that human resources are involved with the capability to attract and retain employees and to ensure that people in the organisation perform at efficient and effective levels so as to contribute to the accomplishment of

organisational goals. Jones and George (2011) mention the challenges in dealing with diversity that needs to be appreciated when dealing with human resource capacity. In this section, human and intellectual capacity will be explored in rationalising responses given by participants.

Thornhill and Hanekom (1996:57) and Boshoff (2008:22) state that in the implementation cycle, municipal officials are the most important implementers of local government policies. The SCAPLAN Chief Executive Officer, agrees that lack of town and regional planners in municipalities is a fundamental problem that creates ailing municipal planning processes that in turn hinders service delivery, economic growth and creating employment opportunities. Municipalities prioritise their recruitment budget for IDP managers who often are not town planners and neglect to recruit town planners as personnel essential for spatial planning, land use management and land development. The discrepancy creates a planning system deficiency, resulting in poor service delivery. The levels of weakness were also identified in the NDP Discussion Document (2015:35), mentioning that there are technical capacity deficiencies that cut across all spheres of government that need to be addressed. Municipalities are criticised for lacking the administrative capacity to perform the assigned duties due to a lack of properly trained and experienced managers and functional employees with the required commitment to succeed (Cloete *et al.*, 2008:74).

The manner in which local government was presented and understood in the early years of democracy led to the impression that local government exists mainly as an implementing agent for service delivery. This notion may still be true. The missing piece, however, is that procedurally service delivery is the end result, following a number of activities, including planning, budgeting and processing. Simplicity dictates that once all activities have been concluded and a product is ready and received or utilised, then the municipality can rightfully claim to have rendered a service.

It is the researcher's view that the successful implementation of the IDP, a plan associated with service delivery, lies greatly on municipal planning processes through an effective and functional land use management system. Thus, a land use management system becomes the engine of a municipality in ensuring that service delivery is possible. This has been complemented and supplemented by the provisions of the various researchers as referenced above.

From the legislative point of view, SPLUMA has, through its provision, brought fundamental changes that clearly recognise an IDP as a tool to integrate, prioritise and budget for economic, social and infrastructural-related projects for service delivery purposes, but does not place it on a pedestal above municipal planning processes. In fact, SPLUMA places the IDP as part of municipal planning, a component of the land use management system. Pretorius and Schurink (2007:19) believe that local government needs to change from an institutional to a developmental

organisation, another dimension to capacity, is that workplace conditions of service, and the quality and sustainability of the internal working environment can be a vehicle to achieve the set government goals. Van Rensburg and Schoeman (2015:8) indicates that failure in the implementation of strategic policies lies with availability of guidelines to empower municipal engineers and engineering staff to have a basic understanding of the theory, concepts, definitions, practices and procedures underpinning the Profession Planning. Furthermore, to enable engagement with planning specialist and related applications such as spatial plans, land development application etc.

Rensburg and Schoeman (2015:1) further submit that the implementation of the Spatial Planning and Land Use Management will require the involvement of engineers and urban and regional planners. Therefore, if government is serious in addressing the developmental challenges, must ensure municipalities tackle their capacity challenges. This will mean prioritising the recruitment of qualified and registered urban and regional planners to perform the necessary municipal planning duties to achieve service delivery. Urban and regional planners are still not considered essential despite evidence indicating that municipal planning can only be perform effectively when urban and regional planners are central to planning and implementation of government strategies.

Section 2 of the PPA defines planning as the initiation and management of change in the built and natural environment across a spectrum of areas in order to further human development and environmental sustainability, specifically in the fields of:

(i) the delimitation, regulation and management of land uses;

(ii) the organisation of service infrastructure, utilities, facilities, and housing for human settlements; and

(iii) the co-ordination and integration of social, economic and physical sectors which comprise human settlements, through the synthesis and integration of information for the preparation of strategic, policy, statutory and other development plans within the South African development context.

The human capacity of the three-case study metropolitan municipalities is considered to be lacking, even though they have a land use management system in place to deal with municipal planning matters. The ability of municipalities to attract and retain qualified and knowledgeable town planners is proven to be a challenge. The Scarce and Critical Skills Research project (2008:36) indicated that there is a demand for skilled and experienced planners. The respondents contended that capacity shortfall affects the extent to which planning is able to play its intended role in development, as well as the time to process applications.

It can therefore be suggested that the three case study municipalities consider presenting an item to the municipal council to increase their recruitment budget for town planners and other

personnel required to ensure that delays in the land development application cycle as mentioned, is arrested. This means that all members of the municipal council must be trained on the entry development value chain so that a thorough understanding is established on how the ailing municipal planning and lack of functionaries negatively impact on service delivery initiatives.

In support of recruitment items to the municipal council, the National Treasury, DRDLR, DPME and the Department of Cooperative Governance and Traditional Affairs should collectively engage with the municipal council, municipal managers and the group chief financial officers on budgeting matters associated with municipal planning as a function of local government, with high impact to the performance of government as a whole. Budgeting must be able to fully cater for the new transformative agenda and fundamental changes brought by SPLUMA on municipal planning functions.

Implementation of SPLUMA evokes section 8(2) of the Municipal Systems Act, stating that a municipality has the right to do anything reasonably necessary, or incidental to, the effective performance of its functions and the exercise of its powers. Thus, budget restructuring is one of the rights a municipality has and powers that can be exercised in order to be responsive to the need of the local community. This high-level engagement is supported by section 9, while budgeting issues are also provided for in section 11(3) of the Municipal Systems Act.

Capacity provision to municipalities is securely provided for under section 51 of the Municipal Systems Act, instructing municipalities to, within its administrative and financial capacity, establish and organise its administration in a manner that they would be able to perform their functions through operationally effective and appropriate administrative units and mechanisms, including departments and other functional or business units. Section 55 of the Municipal Systems Act empowers municipal managers to build capacity by appointing, training and utilising staff to ensure effective implementation of by-laws and other legislation. Important is the responsibility of the municipal manager to control all income and expenditure of the municipality through compliance with the Municipal Financial Management Act.

Section 34 of the Municipal Financial Management Act states that:

> (1) The national and provincial governments must by agreement assist municipalities in building the capacity of municipalities for efficiency, effective and transparent financial management.
>
> (2) The national and provincial governments must support the efforts of municipalities to identify and resolve their financial problems.

Credit must be given to national and provincial governments for various support given to municipalities. This support includes financial and technical support. However, with the advent of

SPLUMA, national and provincial support propelled a different or additional way of support as guided by the SPLUMA Implementation Readiness Report (SIR Report) that was commissioned by the DRDLR in 2014 and subsequently by SALGA in 2017.

The researcher deduces that from the SIR Report, the National Treasury, together with municipalities, were supposed to come together and identify areas that needed support. Thus, the SPLUMA implementation budget was supposed to be allocated accordingly. This initiative was then going to collaborate with the Municipal Infrastructure Grant. This grant often cannot be spent because the related municipal planning projects are still not prioritised, especially where SPLUMA requires certain projects to be done, for example, development of a single land use scheme and the municipal SDF that deals with informalities (regularisation project).

With SPLUMA, there are a number of projects that need to be done, including developing training material and providing training towards the effective implementation of SPLUMA. Through this study and the responses given, it is clear that municipal managers and political office holders have not grasped the magnitude of what SPLUMA is all about; hence, the budgeting system still prioritises the provision of various infrastructural assets without integrating it with the municipal planning processes or related municipal planning projects that will reduce red tape and delays in meeting the set target of infrastructure provision.

The SALGA Strategic Framework (2017-2022:32) states that SALGA shall develop measurable indicators for ease of doing business (reducing red tape and rezoning turnaround times) and conduct research and develop indicators on the time it requires to get approval for planning (township establishment) processes. This study has initiated the process that can be useful in capacitating SALGA to deliver on their commitment, with the hope that the findings will allow SALGA to engage with municipal managers and mayors to recognise municipal planning as the key in unlocking development and service delivery.

It is suggested that in order to deal with capacity challenges associated with service delivery, municipalities must embrace municipal planning and then plan and budget accordingly. Integrated planning calls for understanding that the IDP will never succeed outside municipal planning processes. Therefore, human and intellectual capacity should not take place independently. This notion is already supported by the Local Government Budgets and Expenditure Review (South Africa, 2011), indicating the urgent need to stabilise the senior management of municipalities to ensure that they have the appropriate technical skills in place. Kanyane (2014:98) and Tewary (2011:21) concede that political will and strong leadership are required to stabilise municipal administration and appropriately utilise public funds to achieve set goals.

There is an urgent need for government to align and coordinate budgeting processes. Fourie and Valeta (2008:138-39), also cited by Kanyane (2014:101) warn that misalignment and poor coordination leads to duplication and wastage of resources. In dealing with capacity challenges, Powell (2012:24) recommends that competent professionals should be appointed to senior management positions and, municipal administration is insulated from undue party-political influence. During the interview, the Chief Executive Officer of SACPLAN, suggested an increase in the number of town planners to be appointed to deal with municipal planning matters. These town planners should be registered to ensure quality and ethical decision-making.

6.8.4 Evidence base application

The table below summarises similarities on challenges and suggestions provided by all participants in this Chapter. The X marking indicate suggested responsibility while XX indicate primary responsibility

Table 6.2: Application of responses

Journey to transformation-effective municipal planning and structured service delivery							
Role and responsibility	municipal government	provincial government	national government	private sector	time frames: level of urgency		
					1-2 years	3-5 years	6-10 years
Administrative reform- good administration							
Municipal planning	x						
Service delivery	xx	x	x	x	x		
intergovernmental relations	x	x	x				
submission of complete land development applications				xx			
Eliminate delays in commenting on land development applications		x	x		x		
eliminate delays in processing land development application	xx				x		
Healthy partnership	x	x	x	x	x		
Law reform							
Streamlining of authorisation related processes	x	xx	xx		x		
repealing irrelevant laws	x	xx	xx		x		
Integration of related laws		x	x				
shortened time frames for public participation on land development application where spatial policies have been extensively participated	x				x		
Promote spatial sustainability: limit urban sprawl, create viable communities and allow predictability and stimulate equitable land in the markets							

balancing competing interest in land use management by protecting the environment and agriculture production	xx	x	x		x		
minimise environmental degradation and fallow and unproductive agricultural land	xx	x	x		x		
Promote spatial efficiency: optimise existing resources							
expedite decision-making to minimise financial, social and economic impact	xx	x	x		x		
Spatial resilience: adoptive to technologies and new thinking							
producing spatial plans that are responsive to climate change	x	x	x	X	x		
explore alternative energy renewable sources	x	x	x	X	x		
promote development incentives to address economic and environmental shocks	x	x	x	X	x		
Capacity building guidelines							
Providing integrated and structured guidelines	x	x	x		x		

Source: own construction (2019)

6.9 CONCLUSION

This study was based on the 7 questions that were to be responded to in order to prove the hypothesis. The research questions were:

i. What is municipal planning in relation to the provision of the constitution?

ii. What is the significance of law reform in light of municipal planning and service delivery?
iii. What is the role of the national, provincial and local government in the broader municipal planning system and service delivery?
iv. Which legislation governs and impedes municipal planning?
v. Which legislation creates inconsistencies and how do such inconsistencies affect the powers and functions of municipalities?
vi. What possible interventions can be explored to reduce inconsistencies while strengthening the performance of municipalities on municipal planning and service delivery?
vii. What can municipalities do to realise land reform and municipal planning?

Through the rationalisation of findings, empirical study and literature review, it became clear that the research questions could not be responded to successfully without unpacking every facet constituting municipal planning as well as associated legislation. The results of the study provided a wider spectrum than the hypothesis suggested. The insights found held compelling reasons as to why such hypothesis needed to be tested. In responding to the research questions, a literature review was undertaken and questionnaires were responded to by participants. The observation was, however, made that government officials in the three spheres of government were careful in providing responses to the questions in comparison to the private sector participants. The careful responses provided by officials were seen as slightly limitation as cautiously crafted responses may not reflect the full nature of a situation at hand. However, the researcher, through the responses given, was able to analyse and conclude the findings of this study through the use of coding and cross-case analysis methods. The researcher followed Babbie's (2014:403-409) recommendation on coding and cross-case analysis as methods for data analysis in the qualitative study where there is a need to link theory and analysis. The cross- case analysis and mixed methods used by the researcher made it easy to deal with limitations.

The aim of the study was to investigate inconsistencies in the national and provincial legislation and their impact on municipal planning processes and service delivery. The hypothesis of the study has been proven partly correct due to the fact that not all ills of municipalities are caused by inconsistencies of national and provincial legislation.

During the research and through the responses, various aspects have emerged to share light on multiple factors impacting municipal planning processes and service delivery. The study indicated without doubt that local government is challenged and burdened with myriads of legislation, uncoordinated monitoring and reporting programmes from both the national and provincial sphere of government. There is a disconnect between the government's vision, policymaking and policy implementation. There is universal frustration from the private sector as legislation is interpreted

and applied rigidly and in other instances, wrongly. There is financial loss both to the private sector and the municipality due to delays associated with legislative compliance and decision-making. Capacity was also mentioned as a factor impacting negatively on municipal planning and service delivery.

Various chapters in this study provided insightful information on the powers and functions of each government sphere and how they relate to each other. The expectation that government has on municipalities to deal with a range of issues such as general service delivery to the local community, ensuring economic growth, infrastructure development, social inclusion, spatial transformation, effective land use management and job creation, will fall short if the above findings are not decisively addressed. Schibi (2014: xxii) believes that as long processes, routines, sequences, expectations, and practices are followed, systems seem to hold up, and things tend to fall into place. It is vital to ensure that expectations are realistic and attainable.

Through this research, different literature sources indicated that local government is the important sphere of government. The Constitution recognises local government as the third sphere of government and not a third level, ranked as the local sphere of government. Hence, section 40(1) of the Constitution states that “national, provincial and local spheres of government are distinctive, interdependent and interrelated”. These three attributes show that there is no seniority per se in government.

The study finding indicated that local government is designed through legislation to operate within multifaceted arrangements as to juggle multiple systems, structures, institutions, procedures, processes and frameworks in order to meet the basic needs of the local community, satisfy government expectations on integrated infrastructure and economic development which are essential to employment growth and to ensure global competitiveness on all development sectors. Local government, through good governance, must be able to connect and synergise multiple provisions of legislation and policies in order to successfully yield tangible outcomes.

The findings also revealed that government cannot prosper when operating outside the private sector.) Lamprecht (2007:53) and Jabavu (2014:28) echo the same sentiments stating that Private–public partnerships are key in all development matters as it enhances sharing of knowledge and ideas, focuses key deliverable of services, integrates economic and better identification and implementation of projects. Furthermore, public-private partnership is essential in promoting efficient, quality and cost and risk sharing. Red tape and undue delays in processing land development applications must thus be discouraged at all times, with an understanding that no investors may invest where there is a high level of uncertainty and non-legislative compliance. Local government depends on good governance advocating structure, processes, mechanisms and strategy (Levi-Faur, 2012:8). Bevir (2013:9), Goodman *et al.* (2010:8), Kiros (2016:9), and

Torfing (2005: 305-308) share interestingly that through good governance, municipalities can administer a set of connections, networks or the operation of the complex mix of factors and actors that actively participate in the administration and developmental affairs of the country. It becomes prudent that municipalities understand that good governance requires a solid and succinctly collaborative effort from different participants to realise service delivery and development.

Furthermore, the study revealed the need for legislative reviews of the national and provincial legislation to enable municipalities to effectively perform their constitutional duties, namely municipal planning and rendering services to the local communities. A panoramic view as well as holistic review of the land use management system is urgently required to deal with multiple ills affecting the development and growth trajectory of municipalities.

Through the rationalisation of findings, a strategic and decisive action is coming strong as a necessity to equip and brand the City of Johannesburg, City of Tshwane and City of Ekurhuleni as municipalities who have the ability to compete globally, attracting and retaining investors. Looking at the fact that in Gauteng, the three metropolitan municipalities used in the study as pilot, are the engine of the economy for the province and the country at large, thus the City of Johannesburg, City of Tshwane and City of Ekurhuleni must have systems in place that are without flaws because their success is dependent on investment opportunities. The findings suggest that the private sector domestically and internationally can only invest where legislation, systems and processes are clear, simple, efficient, effective and beneficial.

Additionally, collaborative efforts between government and the private sector were found to be of utmost importance in ensuring that local communities' benefit through various sustainable projects and programmes essential to job creation and skills development. The City of Johannesburg, City of Tshwane and City of Ekurhuleni must then begin to take charge of municipal planning as their core functions as provided for in the Constitution. Integration and alignment of authorisation processes must be seriously explored to reduce unnecessary delays in land development applications.

Municipalities must take a leading role and approach the minister responsible to ensure that municipal planning processes are not frustrated by duplicated processes and uncoordinated supporting programmes offered. The reality that the RSA must consciously embrace is that economic growth and job creation depend heavily on activities and transactions taking place within the municipal areas of jurisdiction. The National Assembly has the responsibility to re-examine applicable laws and prioritise municipal planning, monitoring and evaluation, budgeting systems as well as reporting cycles.

The decision-makers in the three spheres of government must decisively assess existing structures, institutional arrangements and applicable laws so that municipalities are able to perform their constitutional mandate for growing the economy through simplified municipal planning processes. Simplified municipal planning processes will restore confidence and attract investment. The government and the private sector must work together towards fostering a partnership that works. In order to restore confidence, legislation and processes must be streamlined to avoid duplications, confused systems and loss of income.

The next chapter will be providing recommendations to ensure that the shortcomings in government as identified in this study, are closed using practical approaches that will transform local government, especially the metropolitan municipalities which are key for economic growth and development of this country.

CHAPTER 7: STRATEGIC RECOMMENDATIONS-REFLECTING NEW KNOWLEDGE

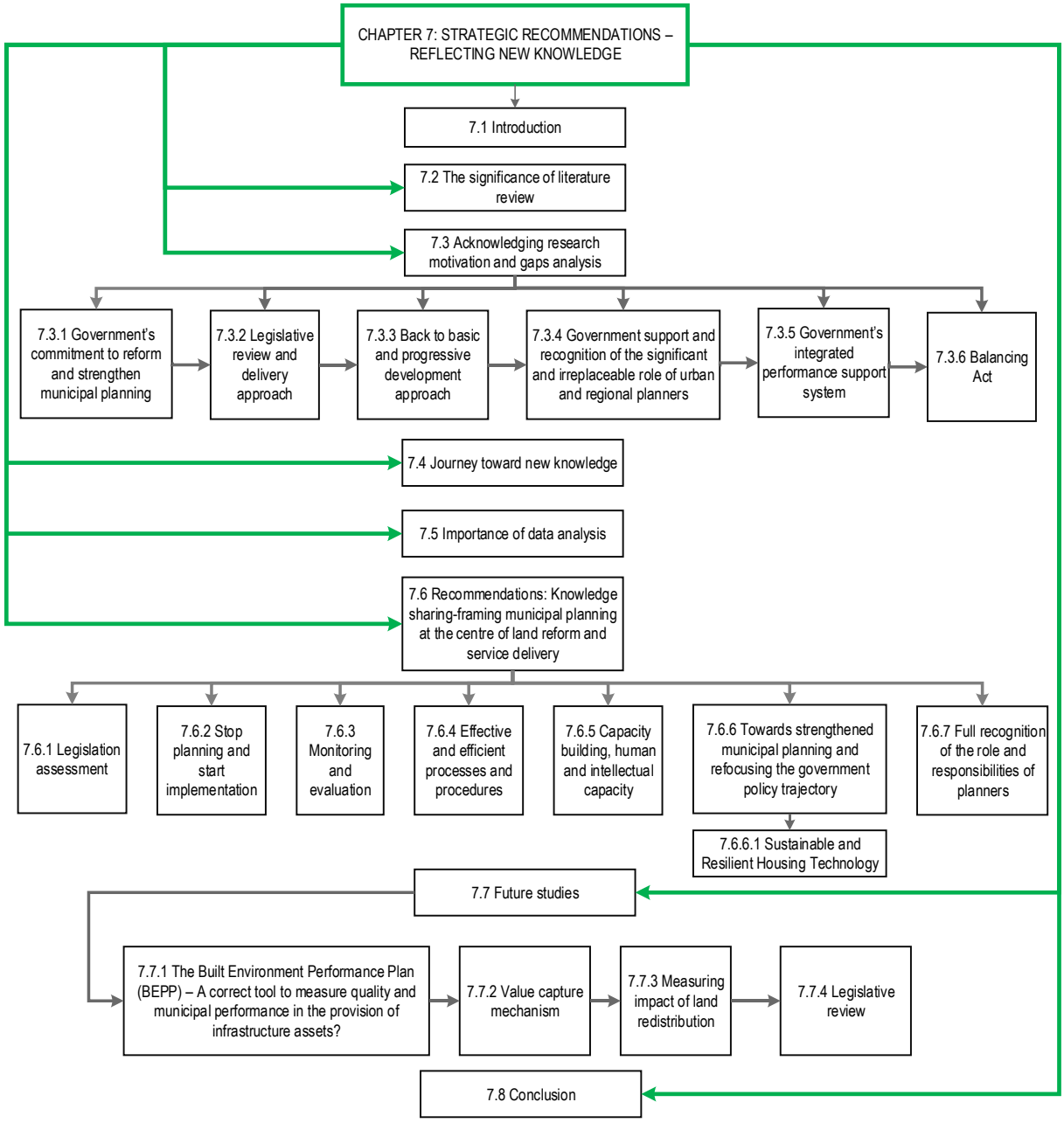


Figure 7.1: Structure of Chapter 7

Source: Own construction (2019)

7.1 INTRODUCTION

This chapter translates theory into practical and implementable activities. It is an indication of the researcher's understanding and knowledge gained through the study. In this chapter

recommendations and suggestions for future research are provided. This chapter is designed to deal with three aspects: Proposed activities to be undertaken by government; conclusions and suggestions for future studies.

7.2 THE SIGNIFICANCE OF LITERATURE REVIEW

The literature review has influenced the thinking and broader understanding of the role of government in municipal planning, law reform and land reform. Furthermore, the significance of intergovernmental relation, good governance and public-private partnership was proven to be central to the effectiveness of municipalities in performing their Constitutional mandate. Through the literature review it was shown without a doubt that land use management system and land administrative system are the engine of any municipality, thus every component thereof must be in place and functional in order to realised structured land development, spatial justice and land tenure security. The new knowledge found as a result of the literature review suggests that government has a momentous task to transform the use of space and the restructure the socioeconomic parameters. The understanding of the gross domestic product and population will assist government to rethink land reform strategies and decisively categories and prioritise most vulnerable people and spaces that can accelerate land redistribution efforts of unlocking investment possibilities, create stable employment opportunities and maximising tenure security to deserving citizens.

Reconsidering reconstructing municipal planning using planning theories – this thesis captured Geddes' planning theories core principle as the "essence of the place" entrenched in administration, participation, culture, and environment. This view is shared by numerous authors and scholars such as Pepler (1955:19-24) and (2009:192-193) amongst others. The ground-breaking work in the context of this research is his understanding and purveyance of societal transformation and transdisciplinary knowledge that later set up the parameters of planning law. This thesis deduction is that this aforementioned point (planning law) is less explored aspect of not Geddes but planning theory in at large. A core argument in an effort to reinforce this point is that Geddes work:

- put up the foundation for the British Housing and Town planning Act of 1909 followed by;
- invitation to put his ideas to work in India; and
- surveying some fifty cities between 1914 and 1924.

Edward Basset zoning codes that provided the elements of a viable system of notation knowledge frameworks that is currently the case and Thomas Adams agenda of mandated legislation, local plans, zoning, building regulations, and licencing or professionalising planners point out to the

imperativeness of the planning law and municipal planning in fulfilling primary objective of service delivery and land use management.

On this basis, it is understood that definitive planning law that is critical for municipal and regional planning existing knowledge deep rooted in planning for urban governance and policy development which draw on a wider range of human and social science disciplines and knowledge frameworks.

7.3 ACKNOWLEDGING RESEARCH MOTIVATION AND GAPS ANALYSIS

The research emanates from the need to accelerate planning transformation where associated statutes are relevant and consistent with each other. The plethora of legislation and policies had been turning municipal planning into a cumbersome function that was failing to meet the development agenda of government in so far as service delivery is concerned. The researcher's interest was further stimulated by the slow pace of integrated planning where spatial planning, transportation planning and environmental management had become mandatory components of the land use management system. Identification of law reform and land reform as a problem impacting municipalities to effectively perform municipal planning was a gap this study dealt with. The gap identified in the research shows the lack of legislative reform, alignment of authorisation processes in dealing with land development and land use management as the contributing factors to ailing municipalities in so far as municipal planning and service delivery. Such gabs indicated the need for land reform whereby land redistribution form part of municipal planning.

Municipal planning and land redistribution require a functional land use management system and land administration system. Given the fact that municipal planning and land redistribution touch on property rights. Legislation pertinent thereto must be relevant and without inconsistencies, duplications and ambiguities. The literature review indicated that government is committed to spatial planning and land use management issues, hence there are multitude policies developed to provide support and guide development. However, in the study, in order to see systematic and tangible results associated with service delivery, the researcher is sharing new knowledge that brings practical activities to be employed by three spheres of government in order to deal with issues of law reform, land reform and municipal planning.

7.3.1 Government's commitment to reform and strengthen municipal planning

Commitment and mind transformation are equally significant qualities to the success of government in creating smart cities that can generate economic growth, create sustainable jobs with dignified minimum wages, and provide infrastructure and services. Government must commit

to municipal planning and municipal planning processes. Development can thrive where a municipality's land use management system is complete and effective.

Monitoring and evaluation strategies that are coordinated are as important as training and skills development. Often, skills development and training are tailor-made for officials, but exclude municipal managers and political bearers. Change is inevitable, so should training for decision-makers be regarded inevitable. Training is necessary for the president and cabinet members, mayors and all members of the legislature as well as the municipal managers and officials. Training will educate officials and politician about the significance of spatial planning and land use management as part of municipal planning and should be implemented through the land use management system. The decision-makers also have an obligation to allow themselves to be educated so well-informed and relevant decisions can be taken.

7.3.2 Legislative review and delivery approach

A legislative review is an important exercise that government needs to be commissioned to do for all legislation that has an impact on municipal planning. Poverty and associated developmental ills can be attributed to irrelevant and inconsistent pieces of legislation that create duplication, red tape and undue delays. The budgeting systems of government also need to be reviewed to ensure better arrangements suitable for government to achieve their developmental goals. The IDP, as provided by the Municipal Systems Act, must be a component of the SDF.

When the proposed review of the Municipal Systems Act is supported, national government must amend the Act to align with SPLUMA. Chapter 4 of SPLUMA places an SDF as a long-term plan; with such provision, an IDP as a short-term plan cannot make an SDF subsidiary. The IDP must be made a component of the National Integrated Infrastructure Provision Plan as guided by the SDF.

To demonstrate this will and commitment, the United Kingdom government can be used as an example. The National Treasury in the United Kingdom has already developed a National Infrastructure Delivery Plan to replace their National Infrastructure Plan, which brings together government plans for economic infrastructure over a period of five years. The National Infrastructure Delivery Plan determines priority projects by adding relevant projects and removing projects that no longer serve government trajectory. The reflection of such commitment was evident when the United Kingdom government budgeted and invested over 100 billion pounds by 2020–2021. The investment was a government and private joint partnership. The mixed funding and finance approaches come from consumer bills, user charges, public funds from taxation, or a combination thereof. The revenue is then ring-fenced and utilised for the purpose as intended (National Infrastructure Delivery Plan 2016-2021:7 and 18).

The South African government, as suggested above, can decisively develop and fund their own National Integrated Infrastructure Provision Plan. A ring-fenced approach can be explored to fund the capital infrastructure projects. Such commitment will provide certainty to the construction supply chain, capacity planning and visibility of potential finance opportunities for investors, and transparency for the wider business community on how infrastructure is provided, maintained and improved.

7.3.3 Back to basic and progressive development approach

In the Reconstruction Development Programme (1994:82 &107), it has been suggested that provision of infrastructure and reviving the economy is connected to reconstruction and development, which must be an integrated process. Infrastructure project planning often uses a forward phase approach. In this study, a reverse planning approach is suggested as a solution to service delivery. The reverse planning approach helps with the project mapping by visualising the final outcome. The reverse planning approach makes the project concept easier, more realistic, manageable and doable. Bull (2010) places emphasis on the reverse planning approach as a tool that helps a project manager to focus and have the ability to track the progress over the course of the project. It becomes a guide for daily activities to be undertaken. For example, when infrastructure projects have been certified by the municipal council through the IDP approval process, project managers must have a specific visual picture of the final product. Such visual product will be the starting point, working backward to determine all activities to be undertaken to achieve the visual product. For example, in working backwards, the project mapping will respond to the following:

- Date of completion.
- Required resources (financial, human and technologies).
- Milestones per phase in order to meet the objectives.
- Communication channels and reporting time frames.
- Productivity level required.
- Possible return on investment.
- Interdependencies between the projects.
- Risk mitigating measures.
- Quality control.
- Starting date.
- Appointment of service providers.

The reverse project planning ensures that proper sequencing and requirements of all phases are done, eliminating unnecessary work. Giritzer (2014:39) and Leach (2014:33-36) agree that reverse planning not only ensures a concrete, tangible work plan, but also illustrates the kind of

dedication that will be required right from the beginning, especially when dealing with long-term projects.

It becomes important for government to ensure that planning of service delivery-related projects not only adopts the reverse planning approach but employs qualified personnel who will understand the development value chain as part of the land use management system. Hence, project planning and implementation can never succeed if done outside municipal planning and without urban and regional planners.

7.3.4 Government support and recognition of the significant and irreplaceable role of urban and regional planners

The role of planners is important. Kumar *et al.* (2016:11) state that planning is about path dependence on the yesterday, today and tomorrow contained in the envelope of time. They use an example where the commitment of the government of India to make Indian cities smart, is concerned with the gap related to the non-capabilities of planners being produced in Indian schools and the skills needed to facilitate smart urban growth, encompassing both the need for modernisation and the removal of abject urban poverty. It is a sad reality that in many parts of Africa, the functions of urban planning and the professional role of urban planners have not been adequately understood, and as a result, most planning functions have been subordinated to other professional disciplines such as architecture, engineering and surveying (Mosha, 1995:42-43). Still in the twentieth century urban planning is still misunderstood. Ashuru (2015:11) shares the misunderstanding taking place in Nigeria, stating that people actually do not know what planners do. All people do know about the work of planners is; granting permit to prospective developers; making sure that people do not build on waterways; preparing local plans, structure plans and layout schemes; and development control.

Urban planning is about the doctrine of tenure and doctrines of estates and the role these play in the economic, land and property markets as well in the social arena. Urban planning with its complexities requires vast training and experienced professional beings. A town planner is also known as an urban planner and is identified as a person who has gained mastery or proficiency in planning and related field of knowledge and skills and can efficiently help to identify and prevent social, economic and environmental problems. In addition, an urban planner is often defined as an ‘agent of change’ who is moving the object of change into a desired state. The reality is that changes globally are not cut and dried, as they require a level of continuous education, training and a support system from government in order to produce planners who can tackle complexities in the built environment.

The skills for and through the Strategic Integrated Project Plan (Department of Higher Education and Training, 2014:63 &114), recognise planners as essential to give effect to the objectives of the NDP and vital for the implementation of the strategic infrastructure plans. With the coming of the democratic government, planning had been trivialised by those who are not qualified by taking planning into their own hands, thinking that planning is merely talking and producing plans. Such trivial acts have created distorted development which must now be addressed by qualified and trained planners through municipal planning.

The role of planners through the enactment of SPLUMA becomes central to all related processes and to the implementation of the strategic infrastructure plans (Department of Higher Education and Training, 2014:114-116). The South African government must ensure that there are adequate planning schools that are accredited and meet competency standards as per the criteria set by SACPLAN in accordance with the Department of Higher Education. Government departments with urban and regional planners must ensure that such planners are correctly placed so that there is excellent performance in municipal planning and service delivery. Furthermore, government departments must ensure that planners are financially supported and remain in good standing with SACPLAN, which as such has benefits to government and the public. Ashuru (2015:15) shares his wish that government and other professionals recognize the need for planners in the country and that politicians should not interfere in the work of planners. The objectives of planning will not be achieved if there are high levels of political interference.

A planner in good standing with SACPLAN has the obligation to act ethically and perform well in his/her duties. Such behaviour and commitment from planners become beneficial to the government and the citizens. The South African president has the responsibility to ensure development and have a maintained professional database that will be connected to the SACPLAN database so that it monitors skills capacity and training available and required for the built environment. Furthermore, such database must be able to track concentration patterns of professionals per town and region and measure against planned development targets. The information will then determine if the distribution patterns of planners is justified to satisfy the developmental needs per town or region. This approach will be highly beneficial for government, especially when provincial government, together with the City of Johannesburg, City of Tshwane and City of Ekurhuleni, can carefully investigate the capacity of planners in order to determine whether the developmental targets set will be possible with the current capacity and experience.

The nature of planning in these three metropolitan municipalities suggests that municipalities must, after thorough assessment, increase the capacity and provide a skills development programme so that planners are relevant and equipped to perform better in responding to the development goals as set by government. SACPLAN has introduced the Continuous Professional

Development Policy and Procedures, which is defined as systematic maintenance, improvement and broadening of knowledge and skills, and the ongoing development of personal competencies and qualities necessary for the execution of professional and technical duties throughout a practitioner's working life.

The Continuous Professional Development Policy is aimed at ensuring consistency with national and international best practices, as well as enhancing professional development in policy priorities in South Africa. SACPLAN encourages government planning schools and other institutions that offer planning courses. SACPLAN is also planning a voluntary association to ensure they offer approved courses relevant to the development of planners in accordance with the Continuous Professional Development Policy. The Continuous Professional Development Policy only applies to persons who have met the entry requirements for registration in terms of the PPA and the 2014 Registration Guidelines of SACPLAN.

The above is an indication that planners need to stay relevant to deal with the ever-changing economic and social needs of the communities as well as the built environment. Planners and the planning profession cannot be substituted but the skills and knowledge can be enhanced. Government plays a crucial role as planners play a role in serving the government in order for the government to serve its citizens. Therefore, government must be able to consciously pay more attention to those institutions that produce planners and municipalities that require more planners in order to ensure that development takes place in a more transformed manner, meeting the global planning and development standards.

7.3.5 Government's integrated performance support system

The empirical study was a useful approach in understanding how municipalities performed their constitutional duties in light of multiple pieces of legislation governing municipal planning. It was found that the City of Johannesburg, City of Tshwane and City of Ekurhuleni Metropolitan Municipalities are the heartbeat and brainpower of the Gauteng Province as well as the Republic of South Africa. These municipalities need to be supported to ensure utmost performance. The support from national and provincial government must start with the real understanding of the powers and functions of each sphere and the practical realisation of how each sphere connect to the other. The national and provincial government must cease to provide municipalities with perceived support but rather ensure that the support provided is needed and useful to yield tangible results. This requires that performance plans of the national and provincial spheres must be aligned with the municipal performance plans so that performance indicators are synergised. It is nonsensical to have a provincial and national plan with a good performance audit report while the local municipalities are struggling.

It is suggested that once municipalities have concluded their short to long-term planning and development plans, the province must then, together with the municipality, determine the types of support required and how their roles and responsibilities will ensure that the development targets set in the municipal annual plan are met. The annual target for municipalities must be guided by the government developmental agenda. This approach will ensure that coordinated planning and development channelling reporting lines will be in harmony within the three spheres of government. Furthermore, aligned targets and reporting lines will ensure that interventions are provided faster and more correctly.

Municipal planning must be used as a fundamental tool for economic development, infrastructure provision and community upliftment. The land use management system must be accepted as an intelligent system to ensure that systematic arrangement, coordination and collaboration of economic, social, infrastructural and institutional sectors perform together. An effective and efficient land use management system has the potential to change the developmental appearance of the country. This development change requires commitment and will inform government.

7.3.6 The Balancing Act

The qualitative nature of the study became clearer when different population groups agreed to share their experiences on both practical and theoretical bases. Furthermore, the assessment of the five pieces of legislation that were at the centre of law reform provided the researcher with much insight on the legislative and executive powers of each sphere of government. The fundamental lesson learned was that legislative drafting process must be guided by sets of rules whereby the need for new legislation is identified and demonstrated. Newly drafted legislation must consider the role and responsibility of each sphere of government in line with the provision of the Constitution. Thus, legislation must be relevant and to the benefit of the public. Legislation must never be seen as the stumbling block frustrating municipalities in performing the municipal planning function and rendering services to the communities.

The analysis of the findings pointed out concerning results that associated multiple pieces of legislation involved in land development and land use management as a challenge, whereby authorisation and approval of land development application depends on multiple set of requirements mandating a single development or an investor to comply with. Poor and uncoordinated processes cause undue delay as result the ability to create jobs is hampered, raising high level of unemployment crippling the ability of the economy to grow.

Land reform, especially land redistribution, was presented as a mandatory act that government must pursue as part of municipal planning in order to address the spatial imbalances and

strengthen land tenure security in line with the Bill of Rights contained in the Constitution of the Republic.

7.4 JOURNEY TOWARDS NEW KNOWLEDGE

The mixed method approach was critical in focusing the research questions using correct research methodology enhances the generation of knowledge bringing theory and practice together in order to develop tangible solutions.

7.5 IMPORTANCE OF DATA ANALYSIS

Data analysis was instrumental in unpacking and analysing information received from various sources. Through proper data analysis deductive reasoning was used to strengthen the objective and new knowledge acquired throughout the research process. When rationalising the responses, the researcher found that there is sufficient evidence to suggest that the expectations conferred on municipalities are realistic and achievable, provided national government take a structured lead in supporting and monitoring local government's performance. Karten (2013:1) states that expectations affect a range of interactions with customers, including service responsiveness, service capacity, product functionality and project success. Communication, policy, practices and stakeholder involvement plays a significant role in managing and satisfying expectations.

7.6 RECOMMENDATIONS: KNOWLEDGE SHARING-FRAMING MUNICIPAL PLANNING AT THE CENTRE OF LAND REFORM AND SERVICE DELIVERY

7.6.1 Legislation assessment

With the above findings, recommendations and conclusions made in this study, it is evident that municipal planning is complex and there are many factors that have an impact on service delivery.

It is important for the reader to see the proposed activities as a mechanism to strengthen government achieving its developmental and transformative agenda where all activities get to be implemented through municipal planning. Legislation review and law reform are at the centre of this research, the literature review as well as qualitative indicated that municipal planning is too regulated and there is a need for an overall assessment to be undertaken to determine the relevance of all legislation impacting or regulating planning. The Institutional arrangement to deal with inter-authority relations in so far as competences and division of duties are necessary so that there is no competition, but collaboration is promoted where there is interestedness of authorities or overlaps on powers and functions of government spheres.

7.6.2 Stop planning and start implementation

Government departments in the three spheres of government have been planning and developing legislation and policies; however, through this study, it has been found that little has been done on the implementation part. Therefore, it was suggested that government must stop planning and deal with implementation as only through implementation efficiency and quality of any policy or legislation can be tested. Land reform, especially land redistribution must be implemented putting elderly, women and people with disability first. Land ownership will bring some form of liberation to the recipient. Furthermore, government must ensure that implementation of policies is strategic enough to benefit South Africans, enabling them to use the land in a much productive way.

7.6.3 Monitoring and evaluation

Activities that are listed by government in their action plans must be periodically measured. Performance management and compliance system must be pillar of any sphere of government to ensure the outcomes are of social benefit and economically impactful. Periodic reporting and accountability procedures must be linked with consequence management. Furthermore, review management system must be incorporated as part of risk management strategy, such will allow government to measure its progress and reflect on intergovernmental and collaboration achievements.

7.6.4 Effective and efficient processes and procedures

Government in the three spheres of government must participate in reducing red tapes and delays on land development applications and adhere to legislatively stipulated time frames. Unnecessary delays in decision-making hamper service delivery, create uncertainty and limit investment opportunities. Municipalities must be bold enough to take decisions where national and provincial government spheres fail to render comments on time. This can be possible when municipalities appoint qualified and competent professionals in the environmental management, transportation planning, mineral resources and other disciplines necessary for taking informed decisions on a land development. It does not make sense to have an EIA that takes more than three months, processes can be shorter and streamlined. It does not serve the community if construction of houses is delayed by the non-issuing of a water use licence that takes more than twelve months. Integrated planning and alignment of authorisation processes must become a reality. Such has been provided by various policies and had recently been authorised by the SPLUMA.

In most instances, it is not policies or legislation that create delays, but rather commitment and competency of officials employed in the public sector.

7.6.5 Capacity building, human and intellectual capacity

Government must ensure that experienced and qualified people are recruited to perform associated duties. Such professionals must be appropriately placed. Furthermore, municipalities must reduce fixed contract positions that do not form part of Section 57(6) of the Municipal Systems Act. There is no justifiable reason for municipalities to appoint urban and regional planners in a fixed term contract, especially where current studied have categories the disciple as scares skill. Monkwe and Seeletse, (2016:650) concur by stating that workplaces can be sustained, improved and made more beneficial for communities, employees and other stakeholder if everyone contributing to the work is employed on a permanent employment and rewarded appropriately. Full-time employment of urban and regional planners who are not reporting directly to the Municipal Manager will ensure stability and continuity of programmes with the same thinking and commitment to developmental goals as set by government. There must be an exchange of ideas and support between professionals in the public and private sectors. Developmental and transformation issues cannot be achieved if government does not rethink its recruitment and capacity building strategy.

7.6.6 Use of alternative technologies

7.6.6.1 Sustainable and Resilient Housing Technology

The poor population is subjected to challenges associated with availability of land, access to finance and security of tenure. With climate change threatening the world, executing land reform part of municipal planning requires municipalities to explore different technologies associated with houses solution for the poor. Government is still faced with delivering mass housing especially in urban areas such as Gauteng Province where the population growing due to migration and perceived employment opportunities. Green technologies must be supported as one of solutions to reduce excessive energy consumption that impact on depleting natural and non-renewable resources, biodiversity and human health. Darko *et al.* (2018:141) contribute by stating that green technologies are important to the achievement of sustainable housing development, providing a cost-effective option for developer, decision-makers and policy makers in attaining long-term built environment where there is a proper balance created between environmental, economic and social objectives.

The green technologies and resilience housing designs may include energy efficiency, water efficiency and material and resource efficiency. Plastic Recycled Bricks is one of the resilient technologies to be explored for housing development subject to meeting requirements of the National Building Standards and Regulation. Gulhane and Gulhane. (2017:1) suggest that instead of using cement, concrete and bricks as construction material for single storied buildings, recycled

plastic material can be used as an initiative responding to climate change and promoting resilient housing option that cost less than brick or cement. Ultimately government has the responsibility to investigate technologies that will promote sustainability and be resilient to withstand hazardous condition as a result of climate change. Exploring housing technologies will benefit and accelerate land reform interventions.

7.6.7 Facilitating woman biased development solutions

Brown (2006:17), consistent with the IUDF, states that urban public space is the setting for a panoply of human activity and fundamental determinants of the character of towns. Investment, affluence, organisation, dereliction, poverty and rebellion are all attributes visible in the public realm. Women are mostly affected by activities taking place in urban public spaces. Urban public spaces can bring cruelty at the same time as bringing hope for the future. It becomes a non-negotiable requirement that government policies especially spatial planning and land use management framework deal vigorously with minimising the cruelty and deprivation that exist in public spaces.

Public spaces are economic means and social interactions that women must enjoy without fear or limitations. Integration, accessibility, safety and security must be designed and provided for with an eye of women. Planning with a woman's eyes brings benefits to children and persons with disability. Urban and Regional Planning is a disciple with intelligence to bring together multiple rights to the urban spaces ensuring that divergence strategies that are indirectly suppress women's ability to enjoy public spaces are discouraged. The use of public spaces must be viewed as a sense of everyday life, a sense of being, thus demand full interpretation of women's spatial experiences of the city. It is the researcher's submission that when urban spaces do not recognise women's needs, such can be viewed as depravation, a form of discrimination and abuse. Spatial planning and land use management must guide designs and architectural elements that resembles patriarchal values. Beebeejaun (2017:327 & 331) concurs stating that patriarchal power relations are the most affecting elements in abusing women's rights to the city in different ways to those of men. Therefore, a more dynamic mapping of spaces and the understanding that spaces cannot be equally inclusive always but might facilitate the creation of more diverse spaces that suit urban dwellers needs. Approaching planning through women's eyes will allow for incorporation of universal design enabling people will disabilities to have access to infrastructure, amenities, social and economic opportunities to make them more self-dependent. The Accessibility Design Guide (2009-2014:8,69 & 104) provides guidelines that ensure that the built environment activities include designs, planning and implementing for elderly, women, children and people with disabilities by promoting access to infrastructure and better locality standards.

7.6.8 Towards strengthened municipal planning and focusing the government policy trajectory

The proposed activities place municipal planning at the centre of land reform and service delivery. Table below proposes government's role in ensuring that the activities listed are achieved in order to transform local government and ensure successful performance in municipal planning and service delivery.

Table 7.1: Proposed activities and lead sphere of government

ROLE OF GOVERNMENT					
Number	**Activities/Actions**	**Lead government sphere**			**Rationale and Benefits**
		National government	**Provincial government**	**Local government (Municipalities)**	
1.	Undertake a comprehensive legislative review on legislation impacting on municipal planning and service delivery	Y Legislation	Y Legislation	Y By-laws and policies	Comprehensive legislative reviews determine pieces of legislation that are not constitutionally sound and relevant to meet the objective of government insofar as growing the economy and decisively dealing with injustices created by the apartheid planning system. The review will ensure legislative consistency and provide guidance in repealing of pieces of legislation that are unnecessary and irrelevant to satisfy the objectives of the Constitution. Furthermore, the comprehensive legislative review will determine pieces of legislation where alignment or integration of related authorisation processes can be possible. The legislative review will reduce the legislative burden that municipalities have been subjected to. The review will be an indication to investors that government is committed in implementing growth and development strategies, reducing unnecessary delays and red tape associated with land development applications and infrastructure provisions. The legislative review will ensure quality and credibility in legislation. It will analyse the practicality and effectiveness of the institutional arrangement contained in various pieces of legislation and suggest possible alternative arrangements. In complementing the above, Catherine (2012), the Australian Policy Handbook (2012), Best Practice Regulation Handbook (2007), Review in Environmental Impact Assessment (DEAT, 2004) affirm that legislative review must be purposive, rigorous, practical, relevant, cost-effective, efficient, focused, adaptive, participative, interdisciplinary, credible, integrative, transparent and systematic which should be the principles guiding legislative review. It should be cautioned that the legislation review must not take place in isolation as it exists within the current social and political context and has the ability to influence a large number of external and internal factors

2.	Develop a planning law assessment framework to guide any legislative review process undertaken	Y			The planning law assessment framework will force lawmakers to determine if there are no other law provisions that can satisfy and cater for the proposed law. The framework will have a criterion, norms and standards that need to be complied with before a law drafting is permitted. It will ensure that the proposed law is necessary, required and does not create any duplications and inconsistencies. Furthermore, it will ensure that the law provision will be enforceable. The Urban Law Tools (2018:7) provides that the planning law assessment framework is necessary and reflective in nature and does not cater for competition among planning laws. It is a benchmarking tool used to explore whether the law has the ability to address the priority concerns and not to quantitatively rank it against other laws from different contexts.
3.	Ensure legislative compliance by all spheres of government, especially by submitting comments within the stipulated time and reject unnecessary delays and red tape associated with processing of land development applications frames	Y	Y	Y	Grimes and Mitchel (2014: 4&6-11) in their research found that developers considered that the length of the planning process and the way in which municipal council staff relate and engage with developers increase the uncertainty and time required to obtain resource and building consents. Adherence to legislative stipulated time frames associated with rendering comments on land development applications will create certainty in the approval processes and boost investor confidence. Financial interests incurred as part of development cost (labour and material cost) will be reduced. Reducing lengthy planning processes without promoting non-adherence to other applicable laws will create a high development capacity essential for economic growth and job creation. Barker (2006:6&95) mentions that to speed up decision-making, improves efficiency which can create benefits to government and the developers. Therefore, businesses should not suffer unnecessary cost and delays during the land development phase. Flexibility, responsiveness and time efficiency can be used as incentives to attract investment to municipalities. Charlton (2008:11) and Harrison *et al.* (2008:90,164-166,198,209) connects red tape in the land development application process with legislation that is not in sync and overly complicated. Pieces of legislation provide for individual procedure and time frames, thus compliance with such requirement, is costly and ineffective.

					It becomes vital for government to explore the alignment and possible integration of processes as provided for by SPLUMA. There is a need for political leaders and officials to work together to reduce delays and red tape in the planning process.
5.	Allow municipal planning process to be at the centre to guide, connect and synergise all other municipal functions			Y	Municipalities will be efficient whereby productivity and performance are increased and measured. When municipal planning is at the core, investor expectations will be largely satisfied. Pitagorsky (2017:1) agrees by stating that defined, aligned processes and realistic expectations create win-win results for all role players. Adherence to municipal planning can generate income for municipalities and help them to become global players in economic and sustainable development. Municipal planning has the intelligence to manage and utilise multiple and coordinated approaches to ensure growth and development. Through municipal planning the concept of value capture can be explored in full to determine approaches appropriate that can deliver measurable benefits that satisfy the needs of different communities. Value capture is a means to source infrastructure funding through mix funding mechanisms such as development charges, taxes and fees, development bonuses to increase land value and improve the performance of land use management, funding of urban infrastructure and provision of services. The revenue from value capture can reduce the burden on government budget of funding infrastructure investments (Infrastructure Australia, 2016:9). Smolka (2013:58) indicates that in Latin America, public authorities are realising the benefits of value capture whereby the link between public intervention and increased land value is conducive for building fiscal and planning cultures that will strengthen local revenues and urban management in general. In Australia, value capture is part of municipal planning and part of long-term planning, as a result, visible benefits are recognised by residents and are reflected in the property market and public infrastructure system (Infrastructure Australia, 2016:8 and 28). When decision-makers recognise that municipal planning is the core competency of local government, the country – through the City of Johannesburg, City of Tshwane and City of

					Ekurhuleni Metropolitan Municipalities – will be able to become development and investment incentive hubs whereby international investors will compete in investing in South Africa rather than South Africa creating investment incentive packages to attract investment.
6.	Review the budg*et al*locati on model to cater for various actions as provided for in SPLUMA. This will mean that proposed projects (capital projects) as listed in the IDP, are guided and take place according to the municipal SDF priority areas and prioritised in accordance with the land development application value chain	Y			Capital budgeting should never be done outside the parameters of municipal planning. Most capital projects are the result of the priority development areas contained in the SDF of the municipality, thus infrastructure provision should be guided by a clearly projected long-term plan linked with the SDF. The SDF must be able to integrate land use, transport and environmental considerations. Such will enable capital projects to be aligned and budgeted for properly. Tassonyi (2002:191-192) mentions that the Ontario municipality in Canada had to review its budgeting system and has adopted a programme-based-budgeting system to ensure efficiency in expenditure (cost-efficiency) and returns or revenue- generated (effectiveness). Programme-based-budgeting is a budgeting tool where all budgetary information is organised around a city's programmes and services and such programmes must be continuously implemented, but with timelines until completion. The benefit is that all activities that are required in that programme are planned, budgeted and implemented accordingly. For example, there would be no completed road construction project that is followed by the storm water department digging up the same completed road for the installation of a storm water drainage system, as such an indication of programme and budget misalignment. Lynch and Zimmerman (2015:22-23) correlate by saying it is not only the cost of the roads themselves that are driven by a quality of roads *per capita*; water-related infrastructure runs beneath the streets and in effect, their cost has a linear relationship to the roads. The SDF programme-based budgeting will promote synergy in implementation and ensure cost-efficiency and effectiveness. SDF programme-based budgeting for capital projects that links strategic land use activities, transportation network and environmental factors can benefit the City of Johannesburg, City of Tshwane and City of Ekurhuleni, as they form a triangle of interconnected economies and infrastructural assets.

					There will be a spill over or shared investment opportunities taking place where one metropolitan municipality benefits from the other due to integrated infrastructure development. SDF programme-based-budgeting can guide and quantify the potential degree of fiscal benefit that compact and integrated development can create. Lynch and Zimmerman (2015:22) submit that a significant portion of municipal budgets is affected by the geographic pattern of development. For example, school traveling distance and transport cost can decline with higher density, enabling walkability. Therefore, there is a need for planners and finance officials to better understand the connection between land use policy and local budget and taxes. Chapman (1988:800) states that the optimum local budget and local development are interrelated and that the jurisdiction's land use decision and revenue raising decisions should be carefully undertaken to avoid deterioration of the local economy. Marginal decision and careful use of fiscal impact analyses are recommended to avoid problems.
7.	Allow municipal planning processes to determine readiness of projects as part of the Capital Investment Framework as guided by the municipal SDF.			Y	When municipal planning processes, such as township establishment or rezoning, are concluded properly, capital investment projects will take place in a structured and coordinated manner to promote integration, accessibility, mobility, walkability and functionality. Furthermore, project costs will be reduced due to alignment of authorisations and coordinated development requirements. When municipal planning processes certify a township as a formal township permitting property ownership and access to various business transactions, capital infrastructure projects will be properly implemented within reasonable time frames. Municipal planning processes through the land use scheme will ensure there is spatial order and harmony, allowing complementary land uses to co-exist.
8.	National SDF must link and coordinate with environmental management; transportation planning and	Y			From the town planning point of view, there is balancing act that need to be explored to protect the natural resources. Environmental management becomes pivotal to spatial planning and land use management. Section 7(b)(ii) and (iii) of SPLUMA states that spatial planning and land use management must "ensure that special consideration is given to the

	spatial planning				protection of the prime and unique agricultural land" and "uphold consistency of land use measures in accordance with environmental management instruments". Snyman (2017:19) affirms that an environmentally focused spatial planning is a key pillar in achieving sustainable development. Schoeman, C.B (2015:44) suggests that there is a delicate balance between environmental, human, economic, institutional, spatial planning and transportation planning to promote alignment and integration; however, the relationship need to be reflected on in the application of planning instruments by all three spheres of government. When the National Development Framework takes a lead in integration and alignment of environmental, transportation and spatial planning, it enables the land use planning tools to mitigate multiple uses with competing interests into harmonious, functional and sustainable neighbourhoods. Therefore, spatial justice and sustainability cannot be achieved if the environmental resources are not protected. Decision-makers in government need to realise that an effective, efficient and inclusive city has a greater chance to grow the economy and create jobs when transportation planning and environmental management is aligned with spatial planning.
9.	Clearly define and rationalise the nature and extent of support required from national or provincial government	Y			The Constitution and SPLUMA provide for intergovernmental relations and enable the national and the provincial spheres of government to provide support to municipalities. In the past two decades there have been a plethora of tools developed for monitoring and evaluation function of municipalities. Clearly defined support required by municipalities will enable the national government to structure their support programmes accordingly in response to the needs mentioned by municipalities. The needs of municipalities must be in line with their development targeted goals and aligned with annual performance plans, indicating outcomes that are realistic, measurable and cost-effective.
10.	Provide training that is relevant and broader to transcend government's silo mentality that has	Y	Y	Y	Spheres of government interact in various aspects. They relate to administrative, financial and jurisdictional matters; hence, intergovernmental relations, training and development is provided for in many pieces of legislation as guided by Section 42(2) of the Constitution.

	impeded progress in different growth development areas				Silo mentality in government must be discouraged by introducing a system thinking approach. Systems thinking is a set of synergistic analytic skills used to improve the capability of identifying and understanding systems, predicting their behaviours, and devising modifications to them in order to produce desired effects. These skills work together as a system. Hopper and Stave (2008:9) as cited by Arnold and Wade (2015:673) indicate that systems thinking permits recognition of interconnections, differentiating types of flows and variables. Such thinking will enable policymakers and decision-makers to recognise the relatedness in government functions insofar as municipal planning and service delivery are concerned. Marule (2014:24) mentions the application of the systems thinking to assist officials to deal with daily multidimensional and complex challenges faced in service delivery to be beneficial. With the adoption of systems thinking, government will be able to strategically and systematically deal with fiscal discipline. Kaiser and Smallwood (2014:93), in support of the latter statement, recognise that decision-making on budgeting is a daily challenge to government, especially where service delivery needs surpass the available funds. Therefore, systems thinking as a model can be useful. Peters and Van Nieuwenhuyzen, (2012:275) indicates systems thinking is necessary for capacity building and can never be successful outside capacity building and skills transfer as cited by Morgan (2006). Morgan, further state that capacity is associated with institutional practice, rules and inputs that enable effectiveness in any development intervention. Ndou and Sebola, (2015:93) affirm that the lack of specific industry expertise is confirmed by the bad audit results and a high pool of service outsourcing". It is thus important to improve technical knowledge and constantly measure professionalism and competence to perform a function.
9.	Develop a National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation	Y			A National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation Framework will be one of the cornerstones of accountability and service delivery. It enables government to consolidate existing multiple monitoring and evaluation tools and create a single framework that measures municipal planning insofar as spatial planning, land use management, infrastructure development and service delivery are concerned.

	Framework and System				The Policy Framework for the Government-wide Monitoring and Evaluation Systems (The Presidency, 2007:12) provides that effective monitoring and evaluation systems are built on good planning, budgeting and feedback systems. The National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation Framework will have multiple components according to the powers and functions of the municipality to ensure that municipal planning is performed in a practical and measurable manner. It will promote accountability, create certainty to role players in the economy, including small and emerging businesses. Furthermore, it will ensure that infrastructure development takes place in accordance with spatial policies creating an environment that provides for visible social, economic and institutional transformation. A National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation Framework will ensure that all legislative processes part of municipal planning is adhered to within reasonable time frames to avoid delays in land development application approvals, project initiation and project completion. It will ensure that accountability and reporting lines are properly structured to provide feedback to Parliament. This will mean there must be only three reporting lines, namely provincial sphere, national sphere, and political structure that will oversee the final report. The provincial and national team must comprise officials with extreme knowledge and functionality of all components of the land use management system as part of municipal planning. A National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation Framework will ensure that priority activities are aligned with budgeting and resources capacity. The UNICEF Programme Policy and Procedures Manual (2005) states that an evaluation and monitoring tool must be able to monitor change or lack of change in conditions or environments and be able to monitor performance or progress in achieving specific objectives of the set projects, programmes and activities. In ensuring that government implements the National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation Framework, an associated system must be developed.

					A National Comprehensive Municipal Planning Compliance, Monitoring and Evaluation System will systematically capture data and analyse the performance of the municipality in line with the set goals and target achieved. The system will, through sets of criteria, be able to identify gaps in relation to quality-based outcomes. A system will permit authorised personnel access, either as a user or viewer. With access to the system, decision-makers in the three spheres of government will be able to intervene and guide on issues where there are impediments. In so doing, no decision-maker will be blindsided or oblivious to development processes and efforts. Morra Imas and Rist (2009:54) submit that in Australia, the government approach was shared with the cabinet, which took those findings seriously to such an extent that policy proposals were presented as a result of those findings.
10.	Develop an Integrated Infrastructure Provision Plan that is led by municipal planning	Y			A National Integrated Infrastructure Provision Plan is a structured approach that is intelligent to manage a collection of closely related and interdependent projects in order to realise the strategic goal of government to grow the economy, create jobs and render quality services to local communities (Young,2007) Notwithstanding the 2012 National Infrastructure Plan compiled by the Presidential Infrastructure Coordinating Commission, there is a need to relook at the current trends and needs so that the infrastructure plan is current and relevant. The infrastructure plan must be a forward-looking plan with a projection ability to analyse the past, understand the current and project future infrastructure demands based on population growth, movement patterns, spatial patterns and economic growth trajectory. The shortcoming of the infrastructure plan was that it rightfully provided for the Strategic Integrated Project Plan. Though the idea was good, the execution remains poor with the objectives not properly satisfied. Part 7 of the National Infrastructure Plan deals with implementation arrangements, in the non-decisive mention of municipal planning processes to be followed. It is the recommendation that for government plans to yield results, it must adopt a different strategy as no sector essential for economic growth and development can strive outside municipal planning and succeed, and often

					the result of non-compliance have social, legal, financial consequences. The Integrated Infrastructure Provision Plan must be relevant enough to correct the submission made by the Business Plan for Sustainable Municipal Infrastructure in the 52 District and Metropolitan Areas in 2008, stating that municipal planning is legally governed by the framework for the IDP. The comprehensive infrastructure plan will build on the foundation laid in the IDP to formulate a model for growth and development in the municipality. The model must accommodate inputs from land use management, regional and town planning, as well as human settlement patterns. This submission or thinking is flawed. Hence, the need to place municipal planning at the centre of development and service delivery. Morphet (2011:1 and 17) notes that to achieve an integrated approach, authorities need to work with local investors from the public, private, voluntary and community sectors. Collectively, they must agree on capital projects with strategic importance that need to be part of the National Integrated Infrastructure Provision Plan. The National Integrated Infrastructure Provision Plan must be guided by the population figure obtained from Statistics South Africa to ensure validity and accuracy of information. Furthermore, the plan must be linked with the SDF so that infrastructure prioritisation can take place where spatial patterns and development potential is identified. For example, the Sheffield city region has implemented an Integrated Infrastructure Plan that has two pillars: Spatial packages whereby integrated investment needs in targeted growth locations are reviewed, and network plans as a second pillar that deal with connectivity issues of multiple locations. These two pillars are said to be informed in a spatial capacity analysis of land uses, transport and the assessment of broader infrastructure gaps in the Integrated Infrastructure Plan. Some lessons can be drawn from the Sheffield city region on this integrated infrastructure subject. Cotton and Franceys (1994: 15-17) and Porter (1986:63-69) acknowledge the importance of infrastructure provision, enabling development to take place. The proposed National Integrated Infrastructure Provision Plan thus goes beyond project planning; it provides for coherent delivery strategies.

					The Infrastructure Provision Plan will compel the three spheres of government to collaborate, plan and deliver as a collective in order to provide much needed infrastructural assets. The plan will ensure that budgeting is also aligned. The alignment of spatial plans, infrastructure plans and budgeting will allow support, monitoring and evaluation to take place in a holistic view. Young (2007:17-20) is the advocate for the structured and collective monitoring process to achieve the clearly defined objective identified as a strategic need.
11.	Develop an Infrastructure Repository System to manage the Integrated Infrastructure Provision Plan	Y			The National Integrated Infrastructure Provision Plan must be facilitated through a centralised National Repository System. All relevant government departments in the three spheres of government will have access to the system either to populate and load projects to be undertaken and associated budget required. The system must have the intelligence to indicate whether the proposed project is as a result of the IDP process, SDF process or emergency project as a result of a disaster. The System must be able to track and analyse progress of projects. Furthermore, it should be able to load projects according to the current needs and determine the project status against the number of projects previously loaded. The system must be able to prioritise and approve or reject projects. When approving a project, the system must recommend budg*et al*location and state all resources required and funding required including start and end date. A progress report must be generated by the system. The system must monitor and raise alarms or flags where there is a delay or non-responsiveness in the project cycle. Such progress reports must be accessible to decision-makers to allow oversight roles and interventions. This will avoid project failure and wasteful and fruitless expenditure. Another approach that can be employed in infrastructure planning and delivery is the reverse or backward planning method, where the planning begins with the end in mind. This approach will ensure that projects are completed on time as set out in the project implementation plan. There are benefits to the backward planning approach.
14.	Ensure appointment and	Y	Y	Y	A reporter of *The New Times* (2010) argues that the job of planners is not to formulate government objectives but rather to translate and implement

	appropriate placement of qualified, experienced and registered urban and regional planners.				them through various formulated strategies and laws. This makes urban planners accountable to government as the government is accountable to the people. Urban planners must be smart, flexible and adaptable to changes, as government changes, the urban planner must be able to review the strategies to ensure alignment with the government's new set of objectives. In the South African context, there are institutions that offer accredited urban and regional planning. The accreditation of planning institutions is done by the SACPLAN in accordance with the PPA. The SACPLAN accreditation programme is aligned with the Council for Higher Education and the Higher Education Quality Committee. The role of the Council for Higher Education is to develop and implement a system of quality assurance for higher education, including programme accreditation, institutional audits, quality promotion and capacity development, standards development and the implementation of the Higher Education Qualifications Sub-framework. The role of the Higher Education Quality Committee is to ensure that quality assurance of high education and associated programmes at undergraduate and postgraduate levels are relevant and responsive to the needs of learners, employers and other stakeholders within the context of social, intellectual and economic requirements of societal development (Council for Higher Education, 2004). The SACPLAN accreditation programme includes any educational institution which has a department, school or faculty of planning. There are 11 planning schools accredited for the purpose of registering with SACPLAN, namely: Cape Peninsula University of Technology; Durban University of Technology; North-West University; University of Cape Town; University of the Free State; University of Johannesburg; University of Pretoria; University of Stellenbosch; University of Venda; and University of the Witwatersrand. The above accredited planning schools have produced planners who haves been certified through qualifications as planners ready to perform town planning duties. The validation of urban and regional planning and urban planners is contained in the PPA. The PPA advocates for accountability and protection of the public from unscrupulous conduct of urban and regional planners. It is important to

					note that urban and regional planners are highly trained and qualified to lead in municipal planning insofar as spatial planning and land use planning and management are concerned. Urban and regional planners are trained to integrate multiple disciplines in the built environment for the sake of development to take place. They are equipped with strategic and forward-thinking techniques, while using regulatory mechanisms to guide, permit and manage development. Furthermore, planners are responsible for legislative enforcement to ensure compliance and order. Urban and regional planners play a critical role in every sector as they are the ones who through various apparatus, mitigate and create an enabling environment for development to take place in a lawful and orderly manner, while balancing multiples rights as contained in Chapter 2 of the Constitution. Urban and regional planning goes beyond the need for an individual sector but harmonise land uses with competing interest and organise them in such a way that they can co-exist to the benefit of the public. Place-making through collective and harmonised land use has the ability to create a conducive and viable environment that promotes social inclusion and various economic opportunities. In light of the above, the role of urban and regional planners and the importance of urban and regional planning as a profession is paramount. There are some worrying findings shared by Hague (2015), who said that in many instances planning work is done by persons with no education or qualifications in planning. Hague (2015) further mentions that through the work for the Commonwealth Association of Planners, it was ascertained that globally there are 30 000 to 35 000 professional urban and regional planners. The majority of planners are found in the United Kingdom, Canada and Australia. However, most countries with developmental challenges have only a few planners and planning schools. South Africa is one of those countries with only a few planners; however, the available and qualified planners are placed incorrectly and not performing the duties according to the qualifications, competency and job description for planners. Campbell (2014) reported in *The Guardian* in an article titled: “For the sake of our cities, it’s time to make town planning cool again”. He said that “the figure of the town planner has arguably become

					comic shorthand for a faceless dullard. Yet the role is crucial to our urban future and needs reinventing." Supplementary to Campbell's statement above, municipal managers must recognise and support planners as a key part of achieving government development initiatives. Government must ensure that municipal planning processes are adhered to. Municipal planning does not exist to regulate private developers, it rather regulates everyone, including government. Decision-makers in government must act in good faith, showing commitment and compliance to the rules and strategies developed and passed for development and service delivery. A land use management system of a municipality can only function effectively and efficiently if such a system is led from the urban and regional planning point of view as guided by the provision of SPLUMA. The South African government has the inherent obligation to adhere to the PPA and ensure that the appointment and placement of qualified planners is done correctly. This should not be a legislative action but rather a government conscious act in order to achieve the developmental goals set.
15.	Consider expanding the boundary of Gauteng Province and reconfiguring municipal boundaries	Y	Y	Y	Gauteng Province, though small in land mass comparatively speaking with other 8 provinces, has the ability to attract migrates and immigrants. The population has over the past years grew more than the land capacity can cater for housing, food productivity, economic and social demands of the inhabitants. The Mid-Year Population Estimates Report (2014) has placed Gauteng as being the highest province accounting for 47,5% of the net international migration in South Africa. This means government from administrative and policy point of view must be able to respond to multidimensional needs of the population without undermining the agricultural and environmental fundamentals. It is submitted that the Demarcation Board reconfigure and extend boundaries of the three metropolitan municipalities in Gauteng so that they can absorb some of the local municipalities who are not economically doing well. For example, The City of Ekurhuleni can absorb Lesedi and part of Victor Khanye Local Municipality; City of Tshwane can absorb part of Thembisile Hani local Municipality; and part of Madibeng Municipality, while City of Johannesburg absorb part of Mogale City. The demarcation board may end up having 8 provinces instead of 9 should grounds of merging the remaining part of the North West Province with the Free State are be established as being desired in resolving the spatial and economic challenges that

					are crippling the Gauteng province. Expanding the boundaries of the City of Johannesburg, City of Ekurhuleni and City of Tshwane will accelerate the land reform initiatives, spatial and economic transformation and restore agricultural production.

7.6.9 Full recognition of the role and responsibilities of planners

Government must place urban planners at the centre of spatial planning, economic development and social cohesion. The knowledge and skills of urban and regional planners have to transverse multi disciplines. Below is the chart indicating multiple disciplines that an urban and regional planner can proficiently contribute.



Figure 7.2: Chart indicating multiple disciples
Source: Ashuru (2015)

7.7 FUTURE STUDIES

Through this research, there are recommended possible studies to be undertaken in response to the findings especially where gaps have been identified. The proposed studies are necessary to broaden and strengthen the outcome of this thesis.

Given the complexities in the built environment and municipal planning, it is suggested that the following topics be explored:

7.7.1 The Built Environment Performance Plan (BEPP) – A correct tool to measure quality and municipal performance in the provision of infrastructure assets

This study will look at the history of BEPP, the terms of reference and how it has assistant municipalities to deal with spatial transformation, whereby National treasury provided financial assistance to those municipalities implementing and reporting on spatial indicators as provided for in the Built Environment Performance Plan. Furthermore, the study must measure quality and efficiency of the provision of infrastructural assets to determine the benefit of the introduction of the BEPP to municipalities, taking cognisance of the powers and function of municipalities and developmental agenda thereof. The aim is to understand if the BEPP in its current form is the right tool to deal with spatial transformation especially where is has been introduced outside the land use management system and looking at the vision and unique nature of each municipality.

7.7.2 Value capture mechanism

There is a need to look at public investment that can generate huge increase in land values especially in areas where the three metros have common economic interest. Such can be transportation network where development impactful corridors are supported to enhance integration, accessibility, optimum utilisation of resources. This will then unlock maximum development opportunities generated by the new infrastructure as a public investment.

The study must determine the value capture associated with planning change or land use change. This is necessary to prioritise and guide public investment that has the ability to yield much desired returns benefiting the community and the country, increasing economic growth and social development. Contributions made by private sector during land development value chain though payment of development charges, levies and so forth seems not to benefit fairly and some communities benefit more than others. It is prudent than a study be undertaken to determine the advantages and disadvantages of transit value capture as a mechanism to fund public transport and new housing development options targeting the poor. This should be discouraging sprawling and target land strategically located in support of the compact city model.

7.7.3 Measuring impact of land redistribution

The study looks at historical land redistributed through the land reform. It must holistically measure the impact in terms of economic growth and social benefit as a result of land redistribution. Indicate success and failures where land redistribution took place part of municipal planning and where municipal planning processes were neglected. This will enable government to measure it performance looking at the maximum benefit of land redistribution. Ultimately land redistribution benefits must indicate a structured, sustainable and viable communities whereby, spatial injustices have been addressed and dignity of people restored by granting them possible rights associated with land/property ownership.

7.7.4 Legislative review

There is a need for government to appoint specialists in different disciplines to undertake a comprehensive legislative review, whereby legislation impacting on municipal planning can be assessed. Such an assessment will determine the relevance of those pieces of legislation, duplications, ambiguities, vagueness and applicability in so far as executive and legislative powers of each sphere of government. Furthermore, it must determine the alignment and possible integration of authorisation processes.

7.8 CONCLUSION

This research has discovered the deficiencies in the manner in which the three spheres of government execute their individual constitutional mandate. Integrated planning is still a challenge hence there are so many pieces of legislation and plans but there are not that many strategies geared for impactful implementation. Municipal planning has not been adhered to in many projects and this has resulted in distorted spatial planning and ineffective land use management systems. Such deficiencies have resulted in poor revenue generation impeding economic growth and services delivery. There is no structured integrated compliance system that will align and monitor government policies, programmes, projects and day to day activities.

Government has the opportunity to assess its real performance for the past ten years and determine ways to deal with gaps as identified. There is a possible recommendation that can guide government in order to ensure that municipalities have confidence, capacity and support to perform their municipal planning duties and render strategic and impactful services that can positively change people's lives. Municipal planning must be seen as a core function to enable government to achieve is transformative and developmental agenda. Proper systems and processes must be in place and legislative requirements must be adhered to. This means that when legislating, legislation must be just, simple and realistic. Legislation must never be used to stall development but rather to give clear rules of engagement and to unlock development.

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APPENDIX A: QUESTIONNAIRES TO STAKEHOLDERS

QUESTIONNAIRE

STAKEHOLDERS: PILOTED MUNICIPALITIES

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

Municipal Officials	Questions
Managers	1. What are the instruments/policies essential to service delivery? 2. What is your understanding on municipal planning processes, procedures and requirements in dealing with land development application processes? 3. What are the instruments/policies/legislation used for land development application (legal administration of land development application? 4. What is the impact of those pieces of legislation in land development processes and efficiency? 5. What is the role of Province and National government in land development applications? 6. In terms of your experience, how has the role of province and national been in land development applications processes? 7. How many times have the municipality revised applicable policies and legislation used to determine and decide on land development application (service agreement, bulk contribution policies etc.)? 8. Do you know if national and provincial government has revised or reform their pieces of legislation impacting on land development application? Elaborate 9. Suggestions: Coordinated planning system with the three spheres of government is required. 10. Hierarchy of reporting is a challenge Premier Vs Mayor's mandate eh Housing role of government 11. Is the turn-around time acceptable to the municipality and the public in terms of development? Elaborate 12. Which of the policies/legislation need to be streamlined to ensure efficiency in development processes?

Thank you for your participation:

INTERVIEW QUESTIONS

STAKEHOLDER: CITIES NETWORK

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

1. What are the instruments/policies essential to service delivery?
2. What is your understanding on municipal planning processes, procedures and requirements in dealing with land development application processes?
3. What are the instruments/policies/legislation used for land development application (legal administration of land development applications?

4. What is the impact of those pieces of legislation in land development processes and efficiency?
5. What is the role of Province and National government in land development applications?
6. In terms of your experience, how has the role of province and national been in land development applications processes?
7. How many times have the municipality revised applicable policies and legislation used to determine and decide on land development application (service agreement, bulk contribution policies etc.)?
8. Do you know if national and provincial government has revised or reform their pieces of legislation impacting on land development application? Elaborate.
9. What is the turn-around time (efficiency) in dealing with land development applications?
10. Is the turn-around time acceptable to the municipality and the public in terms of development? Elaborate
11. Which of the policies/legislation need to be streamlined to ensure efficiency in development processes?

Thank you for your participation:

INTERVIEW QUESTIONS

STAKEHOLDER: PLANNING CONSULTANTS

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

4.1 What is your understanding on the role of the municipality in service delivery?

4.2 What is your understanding on municipal planning processes, procedures and requires in dealing with land development application processes?

4.3 In terms of land development and land use management processes, what are the shortcomings?

4.4 How many pieces of legislation that you know are involved in land development application processes?

4.5 What is your understanding of Province and National government in land development applications?

4.6 In your view, what are the impacts of those pieces of legislation on the efficiency of municipalities in dealing with land development application?

4.7 How have you been affected by these processes, procedures and requirements in dealing with land development application?

4.8 How are the time frames of each legislative process impacting on you?

4.9 What are the financial implications if there are delays?

4.10 Give any 3 recommendations to rectify the current situation regarding land development applications and related processes/procedures taking cognizance of requirement from multiple pieces of legislation involved.

Thank you for your participation:

INTERVIEW QUESTIONS

STAKEHOLDER: EKURHULENI CORPORATE AND LEGAL

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED: BY EKURHULENI CORPERATE AND LEGAL

1. What are the instruments/policies essential to service delivery?
2. What is your understanding on municipal planning processes, procedures and requirements in dealing with land development application processes?
3. What is the impact of those pieces of legislation in land development processes and efficiency?
4. What is the role of Province and National government in land development applications?

5. What is the role of legal in the development planning processes and tribunal composition and processes?

6. How many times have the municipality revised applicable policies and legislation used to determine and decide on land development application (service agreement, bulk contribution policies etc.)?

7. Do you know if national and provincial government has revised or reform their pieces of legislation impacting on land development application? Elaborate

8. Is the turn-around time acceptable to the municipality and the public in terms of development and what are the legal implications? Elaborate

9. Has the municipality taken to court on issues of land development/ service delivery? Elaborate.

Which of the policies/legislation need to be streamlined to ensure efficiency in development processes?

INTERVIEW QUESTIONS

STAKEHOLDER: DAFF

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED BY DAFF

1. What is the role of the department in land development applications processes and service delivery?

2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation?

3. How many agriculture and forestry legislation AND OTHER Legislation you know that municipalities must consider and complied with when dealing with land development applications?

4. Are those (agriculture) pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate

5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)?

6. How is the impact of those pieces of legislation to municipal planning processes/ land development application?

7. When the department is developing policies and legislation, what is the role of municipalities?

8. What are the mechanisms that national government can play in ensuring that municipalities are empowered and efficient in dealing with land development application?

9. Does the department consider streamlining DAFF processes to reduce regulatory burden to municipalities?

10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

INTERVIEW QUESTIONS

STAKEHOLDER: DEA

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND:

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy.

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

Name of the Departments	QUESTIONS ON MUNICIPAL PLANNING
Department of Environmental Affairs	1. What is the role of the department in land development applications processes and service delivery? 2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation? 3. How many environmental legislation AND OTHER Legislation you know that municipalities must consider and complied with when dealing with land development applications?

	4. Are those environmental pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate 5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)? 6. How is the impact of those pieces of legislation to municipal planning processes/ land development application? 7. What are the mechanisms that national can used in ensuring that municipalities are empowered and efficient in dealing with land development applications? 8. Does the department consider streamlining environmental processes to reduce regulatory burdens to municipalities? 9. Which environmental laws can be streamlined or repealed or sectional repealed to ensure efficiency in municipalities? 10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

Thank you for your participation

INTERVIEW QUESTIONS

STAKEHOLDER: DPME

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

Name of the Departments	QUESTIONS ON MUNICIPAL PLANNING
DPME	1. What is the role of the department in land development applications processes and service delivery? 2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation? 3. How many environmental legislation AND OTHER Legislation you know that municipalities must consider and complied with when dealing with land development applications? 4. Are those pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate 5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)? 6. How is the impact of those pieces of legislation to municipal planning processes/ land development application? 7. What are the mechanisms that national can play in ensuring that municipalities are empowered and efficient in dealing with land development applications?

	8. Does the department consider streamlining processes to reduce regulatory burden to municipalities? 9. Which laws can be streamlined or repealed or sectional repealed to ensure efficiency in municipalities? 10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

Thank you for your participation

INTERVIEW QUESTIONS

STAKEHOLDER: DRDLR

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

Name of the Departments	QUESTIONS ON MUNICIPAL PLANNING
Department of Rural Development and Land Reform	1. What is the role of the department in land development applications processes and service delivery? 2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation? 3. How many environmental legislation AND OTHER Legislation you know that municipalities must consider and complied with when dealing with land development applications? 4. Are those pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate 5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)? 6. How is the impact of those pieces of legislation to municipal planning processes/ land development application? 7. What are the mechanisms that national can play in ensuring that municipalities are empowered and efficient in dealing with land development applications? 8. Does the department consider streamlining processes to reduce regulatory burdens to municipalities?

	9. Which laws can be streamlined or repealed or sectional repealed to ensure efficiency in municipalities? 10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

Thank you for your participation.

INTERVIEW QUESTIONS

STAKEHOLDER: Piloted Municipalities

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

Municipal Officials	Questions
Managers	1. What are the instruments/policies essential to service delivery? 2. What is your understanding on municipal planning processes, procedures and requirements in dealing with land development application processes?

	3. What are the instruments/policies/legislation used for land development application (legal administration of land development application? 4. What is the impact of those pieces of legislation in land development processes and efficiency? 5. What is the role of Province and National government in land development applications? 6. In terms of your experience, how has the role of province and national been in land development applications processes? 7. How many times have the municipality revised applicable policies and legislation used to determine and decide on land development application (service agreement, bulk contribution policies etc.)? 8. Do you know if national and provincial government has revised or reform their pieces of legislation impacting on land development application? Elaborate 9. Suggestions: Coordinated planning systems with the three spheres of government are required. 10. Hierarchy of reporting is a challenge Premier Vs Mayor's mandate and Housing role of government 11. Is the turn-around time acceptable to the municipality and the public in terms of development? Elaborate 12. Which of the policies/legislation need to be streamlined to ensure efficiency in development processes?

Thank you for your participation:

INTERVIEW QUESTIONS

STAKEHOLDER: Gauteng provincial sphere of government

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

Name of the Departments	QUESTIONS ON MUNICIPAL PLANNING
The Premier's office	1. What is the role of the department in land development applications processes and service delivery? 2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation? 3. How many environmental legislation AND OTHER Legislation you know that municipalities must consider and complied with when dealing with land development applications? 4. Are those pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate 5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)? 6. How is the impact of those pieces of legislation to municipal planning processes/ land development application? 7. What are the mechanisms that national can use in ensuring that municipalities are empowered and efficient in dealing with land development applications? 8. Does the department consider streamlining processes to reduce regulatory burden to municipalities? 9. Which laws can be streamlined or repealed or sectional repealed to ensure efficiency in municipalities? 10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

Provincial Department Premier’s office and Economic Development

Thank you for your participation

INTERVIEW QUESTIONS

STAKEHOLDER: SALGA

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

1) What is your understanding on the role of the municipality on service delivery?
2) What is your understanding on municipal planning processes, procedures and requires in dealing with land development application processes?
3) In terms of land development and land use management processes what are the shortcomings?

4) How many pieces of legislation that you know are involved in land development application processes?
5) How is your understanding of Province and National government in land development applications?
6) What is the impact of those pieces of legislation on the efficiency of municipalities in dealing with land development application?
7) How have you been impacted by these processes, procedures and requirements in dealing with land development application.
8) Which pieces of legislation that you know requires amendment and which processes need streamlining to ensure efficiency on land development application.
9) Any 3 recommendations to rectify the current situation

Thank you for your participation.

INTERVIEW QUESTIONS

STAKEHOLDER: SAPI

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy.

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

1) What is your understanding on the role of the municipality on service delivery?
2) What is your understanding on municipal planning processes, procedures and requires in dealing with land development application processes?
3) In terms of land development and land use management processes what are the shortcomings?

4) How many pieces of legislation that you know are involved in land development application processes?

5) How is your understanding of Province and National government in land development applications?

6) What is the impact of those pieces of legislation on the efficiency of municipalities in dealing with land development application?

7) How have you been impacted by these processes, procedures and requirements in dealing with land development application.

8) Any 3 recommendations to rectify the current situation

9) Is the turn-around time acceptable to the municipality and the public in terms of development? Elaborate

10) Which of the policies/legislation need to be streamlined to ensure efficiency in development processes?

Thank you for your participation.

INTERVIEW QUESTIONS

STAKEHOLDER: SAPOA

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

---

1. BACKGROUND

The process leading to the assertion of SPLUMA revealed amongst others several challenges, including:

- Applicable myriad of legislation, rules and procedures perceived to have not transformed fully to recognize the constitutional framework in so far as local government is concerned;
- Misconstrued roles of government spheres in regulating competing land uses and lack of understanding of municipal planning as a function;
- Existing deficiencies in legislation interpretation in so far as competency of local government resulting in unintended creation of legislation superiority and hierarchy;

2. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

3. CASE STUDY: CITY OF JOHANNESBURG; CITY OF TSHWANE; AND EKURHULENI METROPOLITAN MUNICIPALITY

4. QUESTIONS TO BE ANSWERED:

4.1 What is your understanding on the role of the municipality in service delivery?

4.2 What is your understanding on municipal planning processes, procedures and requires in dealing with land development application processes?

4.3 In terms of land development and land use management processes, what are the shortcomings?

4.4 How many pieces of legislation that you know are involved in land development application processes?

4.5 What is your understanding of Province and National government in land development applications?

4.6 In your view, what are the impacts of those pieces of legislation on the efficiency of municipalities in dealing with land development application?

4.7 How have you been affected by these processes, procedures and requirements in dealing with land development application?

4.8 Give any 3 recommendations to rectify the current situation regarding land development applications and related processes/procedures.

Thank you for your participation:

INTERVIEW QUESTIONS

STAKEHOLDER: TREASURY

INCONSISTENCIES IN NATIONAL AND PROVINCIAL LEGISLATION, A CONSEQUENCE TO THE AILLING MUNICIPALITY: MUNICIPAL PLANNING AND SERVICE DELIVERY

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1. STUDY OBJECTIVES

A key objective of this study is to investigate and document inconsistencies found in legislation and policies impacting municipal planning and service delivery.

Name of the Departments	QUESTIONS ON MUNICIPAL PLANNING
National Treasury	1. What is the role of the department in land development applications processes and service delivery? 2. What is the role of the department in the IDP process, MSDF and Land Use Scheme Formulation? 3. How many environmental legislation and other legislation you know that municipalities must consider and complied with when dealing with land development applications? 4. Are those pieces of legislation in accordance with the provisions of the 1996 Constitutional mandate on local government? Elaborate 5. When last did the department/national conduct a law reform exercise to ensure that pieces of legislation dealing with land development and land use management are in harmony with each other (Pre and post 1996 legislation)? 6. How is the impact of those pieces of legislation to municipal planning processes/ land development application?

	7. What is the mechanism that national can play in ensuring that municipalities are empowered and efficient in dealing with land development application? 8. Does the department consider streamlining processes to reduce regulatory burden to municipalities? 9. Which laws can be streamlined or repealed or sectional repealed to ensure efficiency in municipalities? 10. What kind of support does the department offer to municipalities to ensure efficiency in land development applications especially adhering to stipulated timeframes for commenting?

Thank you for your participation

APPENDIX B: LETTER FROM UNIVERSITY

Declaration

This is to declare that I, Annette L Combrink, accredited language editor and translator of the South African Translators' Institute, have language-edited the thesis by

E.M. Lentsoane

with the title

Inconsistencies in National and Provincial Legislation and their Impact on Municipal Planning Processes and Service Delivery



Prof Annette L Combrink
Accredited translator and language editor
South African Translators' Institute
Membership No. 1000356
Date: 19 February 2020