

A guide to the Spatial Planning & Land Use Management Act [SPLUMA]



USAID: RESILIENCE IN THE LIMPOPO BASIN PROGRAM (RESILIM) – OLIFANTS



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The institutional conflict in planning legislation

After 1994, the [Development Facilitation Act \(DFA\) of 1995](#) was introduced (as an interim measure) to facilitate and fast track the Reconstruction and Development Programme (RDP) in an attempt to address the legacy of unequal spatial patterns. Post 1994, a lot of planning related laws entailed different procedures making land use management complex.

In 2001, a white paper on spatial planning and land use management was developed suggesting the need for a uniform set of procedures for land development approvals. In this way the issue of different procedures in different provinces would be addressed and there would be an integrated system of planning.

However Chapters 5 and 6 outlines procedures for land development applications in which developers may go through provincial government for authorisation. In addition to this, the approval procedure for land development applications through provincial government (under DFA) appeared to be easier and quicker for land developments through the ordinances used by municipalities - a process often seen as tedious and time consuming. The implication of the two chapters was that the DFA could serve as an alternative and parallel procedure to the ordinances. This meant that there were two structures of governance that had decision making powers relating to spatial planning on the same subject matter.

An institutional conflict emerged in a case that involved the City of Johannesburg Metropolitan Municipality (local) and the Gauteng Development Tribunal (provincial). Between 2004 and 2005 the Gauteng provincial tribunal approved three applications for developments (within the jurisdiction of the Johannesburg Metropolitan Municipality) which the city of Johannesburg municipality had previously not approved. This created conflict between the views held by two planning authorities. The local municipality then appealed the validity of Chapters V and VI of the DFA after attempts to resolve the issue with province were fruitless. In 2010, [a Constitutional Court ruling declared the two chapters as unconstitutional and infringed on the exclusive rights of local municipality with regards to spatial planning](#). This eventually led to the repeal of DFA and since then legislation relating to planning was redefined. In 2012, a bill on spatial planning and land use management was approved leading to the expiry of the DFA. After the repeal of chapters 5 and 6 of the DFA, all legislation related to spatial planning have been brought into one piece of framework legislation.

In 2015, [SPLUMA was passed as the new legislation on spatial planning](#) replacing the Development Facilitation Act (DFA) of 1995 and other pre- 1994 (national) spatial planning related legislation such as the:

- Removal of Restrictions Act (84 of 1967);
- Physical Planning Act (88 of 1967);
- Less Formal Township Establishment Act (113 of 1991) and the
- Physical Planning Act (125 of 1991).

SPLUMA is now used in conjunction with other related planning legislation such as NEMA (National Environmental Management Act) to ensure its consistency, uniformity and alignment with other legislation on land management.



With this new Act, the local municipality is the authority of first instance for land development where it is the best scale of implementation.

However the success of SPLUMA still requires commitment and alignment between all spheres of government.

How important is SPLUMA?

The Act provides a guiding framework for spatial planning and land use management in South Africa. The principles of SPLUMA are not necessarily new but are in alignment with the normative direction outlined in the National Development Plan. With support from provincial and national government, *local municipalities are land use regulators of first instance*

SPLUMA seeks to address historical spatial imbalances and promote sustainable development in planning.

There is hope to bring out changes in the following ways:

Socially	Spatially	Environmentally	Economically
Improve service delivery to the people	Deal with the unequal spatial patterns of the past.	Promote a balance in meeting the socio-economic needs of people with environmental management.	Bring about investment in land development.

Making sense of SPLUMA

SPLUMA is made up of 7 chapters. To fully understand SPLUMA, it is necessary to study the legislation in its entirety as references are often made to various subsections or chapters which outline conditions or principles that are interlinked.

Below is a brief description of each chapter: Special attention should be given to the preamble which states clearly the intention of SPLUMA.



Chapter 1: Definitions, Objectives

This chapter provides definitions to specific words or expressions that are used in the context of spatial planning applicable to the Act.

Development principles, norms and standards.

This chapter provides the five main development principles that should guide all authorities responsible for implementing any by-law or policy on land development. Norms and standards are also prescribed by the Minister (of Rural Development and Land Reform) which reflect national policies on development.

Chapter 2: Development principles of SPLUMA

The development principles detailed in SPLUMA apply to all organs of state and authorities who are land use regulators.

■ Spatial justice

Spatial plans (planning) should (not only) include the previously disadvantaged but also address past imbalances in spatial planning.

■ Spatial resilience

Resilience simply put refers to the capacity or ability to recover quickly from difficulties. The livelihoods of communities that are more vulnerable to socio-economic and environmental shocks should be secured and accommodated in spatial plans that are flexible and innovative to speak to specific local challenges.

■ Spatial sustainability

Environment management instruments such as NEMA must be applied to protect prime agricultural land. Spatially, land development should limit unsustainable settlement and infrastructural patterns. Spatial sustainability refers to the promotion of land use management that is based on principles of socio-economic and environmentally sustainable development.

■ Spatial efficiency

The use of land for development should take into account optimizing resource use and placement of infrastructure in an efficient way.

■ Good administration

Good administration entails **co-operative governance** and transparency between all spheres of government to contribute to spatial planning that reflects the national agenda for development and land management. This principle is of vital importance as implementation of this framework requires good governance and co-ordination towards a collective vision.



*Co-operative governance entails a hierarchical relationship
Between local, provincial and national government in support
to each other and collective action.*

Chapter 3: Inter-governmental support

This chapter outlines the role that provincial and national government play in providing support to local municipalities on land use management. **SPLUMA does not repeal provincial Acts** nor any existing municipal by-laws. Land use planning is a municipal function. In the case whereby an approved development by a municipality has an impact that goes beyond a municipal jurisdiction, the relevant provincial authority may put in place laws that will assist or support the municipality with land use management.

The Departments of Rural Development and Land Reform (DRDLR) and Co-operative Governance and Traditional Affairs (DCoGTA) support the implementation of SPLUMA from a national level.

Provincial government provides technical support role to local municipalities and an advisory role in dispute resolution.

Municipal by-laws

SPLUMA make provisions for Local Municipalities to develop land use planning by-laws to meet their unique, local context. In some areas provincial municipalities develop standard draft by-laws which local municipalities may consult or consider for adoption. In the absence of provincial legislation, local municipalities draft by-laws as a basis for land use management. By-laws vary from municipality to municipality but have to comply with SPLUMA. Because SPLUMA provides a framework for planning, municipal land use planning by-laws are necessary to speak uniquely to each municipality's context for development or management. In other words, to implement SPLUMA, municipality use by-laws as rules to facilitate implementation.

Chapter 4: Spatial development frameworks

SPLUMA requires all spheres of government (national, provincial, regional and local) to prepare an SDF. A Municipal SDF is informed by the Municipal Systems Act (of 2000) and must align with its respective regional, provincial and national SDFs. Land use management was regarded as the mechanism for the implementation of the principles of the Act.

The SDF is therefore a key instrument which sets out the spatial development vision of the government together with the IDP.



Chapter 5: Land use schemes

A land use scheme is a tool used by municipalities to regulate and manage land development according to the vision, strategies and policies contained in the IDP and SDF while supporting the interest of the general public to promote sustainable development. A scheme shows the actual land use in an area e.g. retail stores or houses.

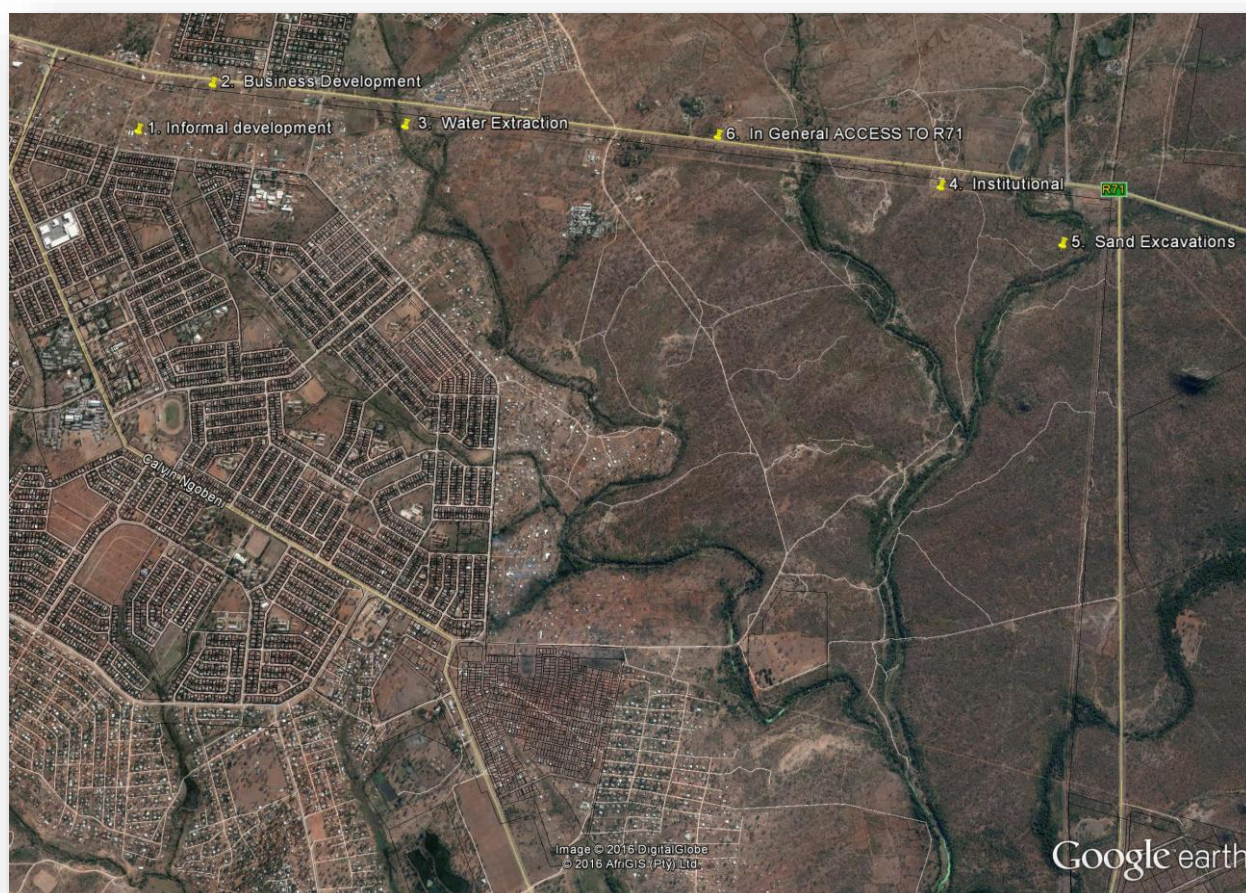


Figure 3: Google image of the residential areas of Namagale outside Phalaborwa

This chapter in addition to land use schemes has nine sub-sections which expand on the purpose of a land use scheme, the procedure on implementing schemes including regulations on development, authorizations and amendments. This chapter also (specifically) states that the executive committee of a municipality must allow the participation of a traditional council in its duties. SPLUMA is not clear in any other role of traditional leadership. There is some concern for municipalities in which there are traditional leaders who historically were involved in land decision making in rural areas. Traditional authorities have since challenged SPLUMA to say that it does recognize them as land owners. The land use scheme must make provisions for the inclusion of rural areas or informal settlements in land use management. Above is an example of a land use scheme (shows specific designated uses on the land) and a spatial development framework map.



Chapter 6: Land development management

Municipalities have a duty to establish a planning tribunal and appeal structures. A detailed explanation on the establishment, roles of municipal Planning Tribunals, procedures relating to land use change or development applications is provided in this chapter. Provisions are also made for municipalities that want to have a Joint Planning Tribunal. SPLUMA stipulates that municipal planning Tribunals may be established as a body to make decisions relating to specified land development applications. This tribunal serves for five years. Politicians and/councillors do not form part of a tribunal. Where necessary, provincial tribunals are involved where municipal planning legislation conflicts with provincial legislation.

A Municipal Tribunal is made up of:
Spatial planners, professional planners, engineers,
auditors, attorneys, environmental
assessment practitioners

Chapter 7: General provisions

Chapter 7 deals with regulations that may be made by the Minister, outlines what is regarded as offences to the Act and the penalties for violation.

Schedules.

A schedule provides supplementary information additional to the text of the Act.

- [Schedule 1](#) of SPLUMA outlines what matters are to be addressed in provincial legislation.
- [Schedule 2](#) lists 15 land use purposes recognized under SPLUMA which may form part of a land use scheme. To better understand regulations for each land use zone, it is necessary to access a municipality's land use scheme.



Glossary

Erf:	A representation of a single registered plot of land.
Municipal by-laws:	By-laws are regulations made by local municipalities emanating from a policy or law. The regulations are set as rules for implementation at a local municipality level applicable uniquely to the municipality
Framework act:	An act that provides or acts as a guideline for spatial planning.
Framework:	A conceptual guideline used as a basis for and outlines ways/procedures for planning
Land use management scheme:	A tool used by municipalities to regulate and manage land development according to the vision, strategies and policies contained in the IDP and SDF while supporting the interest of the general public to promote sustainable development.
Land use regulator:	An authority responsible for making decisions relating to spatial planning and land use management. Apart from the municipality, each province is to have a provincial planning tribunal as a land use regulator for specified situations. Nationally the minister is the land use regulator of last resort when there is a disregard for national policies/principles
Municipal planning tribunal:	A body of experienced planning professionals, attorneys or any individual with knowledge and experience in spatial planning/land use management who are given responsibility to make decisions regarding specified categories of land development or planning applications in future.
Provision:	A condition stated as a clause in an act.
Spatial development framework:	A framework used to guide decision making in spatial planning and development priorities of a municipality's current and future land use.
Urban bias	Previous planning policies aimed at or focused on town and urban development without including rural or informal areas.

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The Association for Water & Rural Development [AWARD]

AWARD is a non-profit organisation specializing in participatory, research-based project implementation. Their work addresses issues of sustainability, inequity and poverty by building natural-resource management competence and supporting sustainable livelihoods. One of their current projects, supported by USAID, focuses on the Olifants River and the way in which people living in South Africa and Mozambique depend on the Olifants and its contributing waterways. It aims to improve water security and resource management in support of the healthy ecosystems to sustain livelihoods and resilient economic development in the catchment.

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About USAID RESILIM-O

USAID: RESILIM-O focuses on the Olifants River Basin and the way in which people living in South Africa and Mozambique depend on the Olifants and its contributing waterways. It aims to improve water security and resource management in support of the healthy ecosystems that support livelihoods and resilient economic development in the catchment. The 5-year program, involving the South African and Mozambican portions of the Olifants catchment, is being implemented by the Association for Water and Rural Development (AWARD) and is funded by USAID Southern Africa.



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Acknowledgements: Project Funding & Support

The USAID: RESILIM-O project is funded by the U.S. Agency for International Development under USAID/Southern Africa RESILIENCE IN THE LIMPOPO BASIN PROGRAM (RESILIM). The RESILIM-O project is implemented by the Association for Water and Rural Development (AWARD), in collaboration with partners. Cooperative Agreement nr AID-674-A-13-00008

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