THE NATURE, SCOPE AND PURPOSE OF SPATIAL PLANNING IN SOUTH AFRICA

Towards a more coherent legal framework under SPLUMA

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DECLARATION

Research dissertation paper presented for the approval of Senate in fulfilment of part of the requirements for the MPhil Environmental Law in approved courses and a minor dissertation. The other part of the requirement for this qualification was the completion of a programme of courses.

I hereby declare that I have read and understood the regulations governing the submission of MPhil Environmental Law dissertations, including those relating to length and plagiarism, as contained in the rules of this University, and that this dissertation conforms to those regulations.

Date: 1 September 2015
Signed: Kimberly Joscelyne
ABSTRACT

Planning law has a significant role to play in facilitating and governing development within a country. In South Africa, a shift has occurred from the utilisation of planning laws to regulating development, to facilitating it. A key area of this legal discipline is spatial planning, which determines the ideal utilisation and allocation of an area for certain land uses. The history of spatial planning in South Africa, and more specifically in the Western Cape, is an interesting one as the planning system that exists is fragmented and fraught with confusion. This has resulted in issues, confusion and conflicts which has resulted in numerous court cases. Previous attempts to reform the planning regime have proven to be somewhat unsuccessful as inherent challenges persist whilst new challenges have arisen. Prior to the introduction of the Constitution, spatial planning was utilised to promote Apartheid ideologies. In 1994 South Africa entered into a democratic era, entrenching equal rights and subjecting all laws to the Constitution. This had hefty impetus for spatial planning and its instruments which, to a large extent, were racially biased and therefore became unconstitutional. The legal regime governing spatial planning was tasked with addressing the ills of apartheid and simultaneously striving towards the goal of sustainable development. Issues and challenges have arisen, which have resulted in a fragmented and incoherent planning dispensation. These challenges and issues include the persistence of old order planning legislation and sector policies with activities operating parallel to the planning discipline. Consequently, there is overlap and confusion with regard to the purpose and legal status of spatial planning instruments. To address this at the national sphere, in 2013 contemporary planning reform was embarked upon, with the enactment of Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA). In light of recent planning reform triggered by the commencement of SPLUMA, the aim of this dissertation is to determine if SPLUMA provides a more coherent legal regime governing spatial planning in South Africa. This is pursued by understanding the role spatial planning has had in South Africa, by determining the nature, scope and purpose that spatial planning under the legal regime prior to SPLUMA. During Apartheid a dichotomy of planning systems existed, where different areas were governed by different laws which were underpinned by racial segregation. This resulted in significant issues of fragmentation and confusion. The transition to democracy brought about significant changes to the legal landscape, including planning as the nature, scope and purpose of spatial planning was tasked with addressing the ills of apartheid and promoting sustainability. Although legislative reform was triggered by democracy, clarity of the legal framework governing spatial planning did not occur. One of the contributing factors of this was the persistence of old order legislation and the spatial planning instruments it provided for. The commencement of SPLUMA has triggered wholesale reform which aims to provide a more coherent legal regime governing spatial planning. Positive strides towards this are evident, including the uniform approach which is applicable throughout South Africa that SPLUMA adopts.
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<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>BauGB</td>
<td>Baugesetzbuch- Federal Building Code (Germany)</td>
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<tr>
<td>CoCT SDF</td>
<td>City of Cape Town Spatial Development Framework</td>
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<td>DEA</td>
<td>Department of Environmental Affairs</td>
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<td>DEA&amp;DP</td>
<td>Department of Environmental Affairs and Development Planning (Western Cape)</td>
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<td>DFA</td>
<td>Development Facilitation Act 67 of 1995</td>
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<td>DRDLR</td>
<td>Department of Rural Development and Land Reform</td>
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<td>EIA</td>
<td>Environmental impact assessment</td>
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<td>IDP</td>
<td>Integrated development plan</td>
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<td>LDO</td>
<td>Land development objectives</td>
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<td>LUPA</td>
<td>Land Use Planning Act of the Western Cape Act 3 of 2014</td>
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<td>LUPO</td>
<td>Cape Land Use Planning Ordinance 15 of 1985</td>
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<td>NDP</td>
<td>National Development Plan</td>
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<tr>
<td>NEM:PAA</td>
<td>National Environmental Management Protect Areas Act 50 of 2003</td>
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<td>NEMA</td>
<td>National Environmental Management Act 107 of 1998</td>
</tr>
<tr>
<td>NEM:BA</td>
<td>National Environmental Biodiversity Act 10 of 2004</td>
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<td>NPAES</td>
<td>National Protected Areas Expansion Strategy</td>
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<tr>
<td>NPDP</td>
<td>National Physical Development Plan</td>
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<td>NPPF</td>
<td>National Planning Policy Framework (UK)</td>
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<td>NSDP</td>
<td>National Spatial Development Perspective</td>
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<td>PAJA</td>
<td>Promotion of Administrative Justice Act 3 of 2000</td>
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<td>PPA</td>
<td>Physical Planning Act</td>
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<td>PPS</td>
<td>Planning Policy Statement (United Kingdom)</td>
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<td>PSDF</td>
<td>Provincial spatial development frameworks</td>
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<tr>
<td>ROG</td>
<td>Raumordnungsgesetz - Federal Regional Planning Act (Germany)</td>
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<td>RSS</td>
<td>Regional Spatial Strategies (United Kingdom)</td>
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<td>SALGA</td>
<td>South African Local Government Association</td>
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<tr>
<td>SDF</td>
<td>Spatial development framework</td>
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<tr>
<td>SEA</td>
<td>Strategic environment assessment</td>
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<tr>
<td>SPLUMA</td>
<td>Spatial Planning and Land Use Management Act 16 of 2013</td>
</tr>
<tr>
<td>UK</td>
<td>United Kingdom</td>
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<tr>
<td>VROM</td>
<td>Ministerie van Volkshuisvesting, Ruimtelijke Ordening en Milieubeheer (Netherlands)</td>
</tr>
<tr>
<td>WCPSDF</td>
<td>Western Cape Provincial Spatial Development Framework</td>
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WRO Wet op de Ruimtelijke Ordening – Spatial Planning Act (Netherlands)
CHAPTER 1: INTRODUCTION

1.1 Understanding the Context

Planning is a dynamic, complex and constantly changing discipline. It arose as a mechanism to regulate and control land use. Different eras, and the temporal priorities characterising them, have shaped the planning discipline and the associated land use planning laws and instruments into the diverse and complex ‘beast’ it is today. Planning developments have occurred in response to phenomena and challenges which societies have been faced with. The Industrial Revolution of the nineteenth century resulted in increased environmental and social pressures. These included increased pollution levels, increased population density and deteriorating environmental conditions, which prompted squalor and unhygienic living conditions. These unhygienic living conditions and deteriorating quality of life stimulated the growth and need for planning.

Planning was given statutory effect through planning laws which provided for various land use controls. Urbanisation, increased land utilisation and associated social issues have resulted in the emergence of these laws. Embedded within these planning laws are legal instruments which inform and regulate how land can be used and developed. At the heart of planning is the need to demarcate land for use which is in the best interests of society and in order to do this, social issues need to be considered. After World War I, more orderly planning evolved which relied on the demarcation of specific areas for certain uses. This was fuelled by the technical revolution and the introduction of the motor car. In the United Kingdom (UK), national Acts were passed to alleviate the squalor and social issues. In South Africa, town-planning ordinances were adopted based on the concepts of the UK Acts. Initially, land use planning laws and the instruments which gave rise to it, were reactive and underpinned by control.

6 Ibid at 28.
9 The ordinances developed in South Africa included the Transvaal Townships and Town Planning Ordinance 11 of 1931, Orange Free State Townships Ordinance 20 of 1947, Township Ordinance (Cape) 22 of 1934 and Natal Private Township and Town-Planning Ordinance 10 of 1934.
Historically, old forms of planning were hinged on regulation and control which were typically aimed at the planning of urban areas. However, planning and its laws have progressed to encompass a wider range of aspects and areas demanding the need for integration with other sectors, in order to address the challenges society currently faces. By nature, planning law is interdisciplinary as elements of constitutional law, administrative law, environmental law, property law and criminal law are apparent within it. Furthermore, it involves governments and their mandates, thus political agendas can have an effect on land use planning laws.

Land use planning laws play a crucial role in guiding and influencing the behaviour of society. The consequences of land use decisions and the planning laws which provide for and guide these decisions, have the potential to substantially affect the environment. Towards the end of the twentieth century there was a rise in environmental concern. Currently, environmental issues are at the forefront of political agendas with a drive towards sustainability. It has been advocated that integration of environmental policies into other sectors of society, such as land use planning, needs to occur to ensure that the environmental pressures induced by economic development are addressed. Sustainable development has been advocated as the mechanism to achieve this, as it is widely acknowledged that sustainability relates to planning, as the goals of sustainability are integrated into planning. Land use planning laws are fuelled by the stresses of sustainable development and dealing with conflicts that arise due to the competing interests. Sustainable development therefore provides direction and an ideal that can guide planning agendas.

Spatial planning is a key aspect of land use planning that has been identified as an important tool in striving towards sustainable development. Spatial planning demonstrates a shift in planning focus to a more pro-active and forward-looking approach. This approach encompasses a broader range of aspects and has been described in various sources.

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11 Todes A “Rethinking spatial planning” 2008 (53) SSB/TRP/MDM 9.
17 The link between sustainability and planning has been explored by various authors, see briefly the Journal of Planning Literature volume 9 (4) which pertains to sustainability.
as a tool which ‘goes beyond traditional land use planning to bring together and integrate policies for the development and use of land with other policies and programmes which influence the nature of places and how they function’. Spatial planning demonstrates an approach which overcomes the narrowly defined and implemented purpose of traditional planning. The form spatial planning has taken over time has not always been clear which can be attributed to various factors. Firstly, there is no hard and fast definition of spatial planning as it is a term which has different meanings in various parts of the world. Furthermore, spatial planning can have different statutory and non-statutory homes, as well as different guises.

As previously mentioned, planning and spatial planning take place in a multifaceted and dynamic arena. Challenges and issues that planning needs to account for are constantly evolving, consequently there is the need for frequent associated legal reform. Planning law changes can occur through incremental changes of the laws and instruments or total planning reform. Planning reform is no easy task, as it is complex and fraught with difficulties requiring a substantial amount of resources and capacity to bring about this change. Revising and implementing new laws are only part of the solution, thus there needs to be a better understanding of the planning laws themselves, the approaches which govern planning, and the integration between other sectors of society.

The planning dispensation and spatial planning in South Africa prior to the commencement of the Spatial Planning and Land Use Management Act (SPLUMA) was fraught with confusion, conflict and largely fragmented. This dispensation has been shaped by political ideologies of the apartheid era and a Constitutional dispensation.

During the apartheid era, a dichotomy of planning systems existed which were underpinned by racial segregation. The implications of this meant that different laws applied in different areas across South Africa. With the introduction of the democratic era, it was evident that the planning system and laws were inappropriate

23 Stated by the UK Government in Office of the Deputy Prime Minister (2005a) Planning Policy Statement 1: Delivering Sustainable Development 12, para 30 when referring to spatial planning in the UK.
24 Vincent N “The emergence of the spatial planning approach in England” 2007 (22) Planning Practice & Research 43.
27 Berrisford S “Revising spatial planning legislation in Zambia: A case study” 2011a (22) Urban Forum 237.
28 Vincent 2007 Planning Practice & Research 44.
29 Ibid at 43, 53.
30 Ibid at 44, 56.
31 16 of 2013.
33 Claassen P “Spatial planning with the Western Cape Province as a case study” in Strydom H & King N Environmental management in South Africa 925.
34 Paterson A “South Africa” (Draft Case Study) 2015 IUCN Environmental Law Centre Integrated Planning Project 1.
35 Legislation such as the ordinances applied in what were considered urban white areas, whereas separate land use planning laws were operating in areas which were scheduled native areas. This will be discussed further in section 3. Refer further to Berrisford S “Unravelling Apartheid Spatial Planning Legislation in South Africa” 2011b (22) Urban Forum 248-249 and Paterson (2015) 1-3.
and fell short of meeting the objectives and goals of a democratic society.\textsuperscript{36} To address this, in 1995 the Development Facilitation Act (DFA)\textsuperscript{37} was introduced. This was a flagship national Act which sought to bring about the much needed change.\textsuperscript{38} The intention of the Act was to introduce a uniform planning system across the country and that provinces would follow suit and develop their own Acts, mimicking the flavour of the DFA.\textsuperscript{39} This was not fully realised as not all provinces developed new Acts and in some provinces, Acts were developed yet they failed to come into effect.\textsuperscript{40} Consequently, planning reform was not adequately achieved as new Acts operated parallel to old order planning ordinances.\textsuperscript{41}

This situation is further complicated by laws which have developed in other sectors throughout South African planning history that influence land use planning.\textsuperscript{42} In contemporary times numerous sector laws influence land use planning, however, there has been an attempt at rationalising land use planning laws and the relationship between other sectors.\textsuperscript{43} The substantive number of laws dealing with planning has contributed to a planning system which is fragmented and fraught with confusion.\textsuperscript{44} This is further perpetuated by different spatial planning instruments having different statutory homes and different statuses.\textsuperscript{45} Problems such as these are common and have given rise to a number of court cases.\textsuperscript{46}

Prior to South Africa’s new planning reform a situation existed where a wealth of laws governed planning and more specifically spatial planning. These laws include chapters of ordinances which have persisted from the pre-Constitutional era, planning laws which were developed after the enactment of the Constitution,\textsuperscript{47} and sectoral laws.\textsuperscript{48} Over time there have been attempts at incremental and total planning legislative reform to address these issues.\textsuperscript{49} It can be argued that these have been largely unsuccessful in bringing about the intended legal reform.

\textsuperscript{36} Berrisford 2011b (22) Urban Forum 251.
\textsuperscript{37} 15 of 1995.
\textsuperscript{38} Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 6.
\textsuperscript{39} Ibid.
\textsuperscript{40} Ibid at 39. The Kwazulu-Natal Planning and Development Act 6 of 2008, Northern Cape Planning and Development Act 7 of 1998, Western Cape Land and Development Act 7 and Gauteng Planning and Development Act 3 of 2003 were developed, however the latter two failed to commence.
\textsuperscript{41} Claassen "Spatial planning with the Western Cape Province as a case study" in Environmental management in South Africa (2009) 928.
\textsuperscript{43} This is apparent through the legal reform introduced by SPLUMA.
\textsuperscript{44} Broadly these laws include laws which prescribe for plans and policies to manage land use, laws which regulate land use, laws that regulate protected areas, laws which regulate land reform and laws of general relevance. The environmental law discipline is an example where various laws have been developed that effect land use planning. Ibid at 928; Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 30.
\textsuperscript{46} Van Wyk Planning Law (1999) 1. Various cases of relevance will be discussed further in section 3.
\textsuperscript{47} Constitution of the Republic of South Africa, 1996 (the Constitution).
\textsuperscript{49} Refer to generally to Berrisford 2011b (22) Urban Forum 247-263.
and have further perpetuated fragmentation and confusion which has persisted over time.\textsuperscript{50} To address the issues and complexities that exist, the South African Government committed to the process of planning reform with the enactment of SPLUMA. SPLUMA has commenced as of 1 July 2015, triggering a new planning dispensation.\textsuperscript{51}

One hopes that the new planning dispensation which South Africa has embarked on will address the issues and inherent problems present in the land use planning discipline. Therefore it is important to consider spatial planning and its intricacies to be able to explore what it encompasses and how effect has been given to it during different eras in South African planning history.\textsuperscript{52}

1.2 Aim and purpose

Given the complex and dynamic nature of planning and its laws, and in light of legal reform in South Africa, this dissertation aims to ascertain if SPLUMA provides a more coherent legal regime governing spatial planning in South Africa and more specifically in the Western Cape. This is achieved through understanding the role spatial planning has had and how the law makers have sought to give effect to spatial planning pre and post SPLUMA. This is pursued by determining whether SPLUMA is moving towards providing greater clarity in terms of which laws govern spatial planning, the form and content of spatial planning instruments, the purpose and legal status of the instruments and lastly the manner in which they integrate with other relevant planning instruments.

This is relevant given that the current planning reform in South Africa will bring about significant changes to the regulatory framework which governs spatial planning. Changes include providing a uniform framework to spatial planning and land use management which is applicable for the whole country.\textsuperscript{53} These changes aim to address the issues in the previous framework which was confusing, fragmented and in dire need of clarity.\textsuperscript{54} Ascertaining the issues which mounted to confusion and fragmentation in the pre-SPLUMA era enables an assessment of whether SPLUMA provides a coherent legal framework governing spatial planning. This is pertinent as sections of SPLUMA have commenced, altering the spatial planning dispensation, therefore there is a need to determine whether SPLUMA will provide the clarity and certainty which was lacking prior to its commencement.\textsuperscript{55}

\textsuperscript{50} Examples of unsuccessful attempts of reform include publications of Bills and Acts which have not been adopted or come into effect. In 2001 the Land Use Management Bill which was published, which was never adopted. Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 928; Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 6.
\textsuperscript{51} Proclamation of SPLUMA in ref GG No. 38828 (27 May 2015). Refer to section 3.2.1 for repealed laws.
\textsuperscript{52} Tewdwr-Jones et al., 2010 (18) European Planning Studies 241.
\textsuperscript{53} Long title of SPLUMA.
\textsuperscript{55} SPLUMA commenced as of 1 July 2015. Proclamation of SPLUMA in ref GG No. 38828 (27 May 2015).
1.3 Methodology and structure

This dissertation will take the form of a desktop study, which reviews the old and new planning laws and frameworks which have been in effect in South Africa. The scope of this dissertation focuses on whether SPLUMA addresses the issues that have transpired and are apparent in South Africa’s fragmented planning system and more specifically, in the Western Cape, focusing on whether the legal reform addresses past issues and challenges that have arisen and persisted prior to the introduction of SPLUMA. The Western Cape has been chosen for a number of reasons. Firstly, the nature and extent of this paper is not large enough to explore the contexts in all nine provinces. Secondly, the Western Cape has experienced many issues and problems associated with fragmentation and confusion in land use planning laws, which has given rise to numerous instances of litigation and thirdly, the recent enactment of provincial planning legislation in the province which has been developed to be consistent with SPLUMA, which makes the province an appropriate choice.

Prior to undertaking the analysis of South Africa’s spatial planning dispensation, it is necessary to theoretically contextualise an understanding of what spatial planning is. This enquiry involves three parts. Firstly, it is necessary to explore issues of terminology. This includes understanding the form and nature of spatial planning and how this differs from other relevant concepts such as planning, land use planning, land use management and land development management. Secondly, it is necessary to distil the essential characteristics of spatial planning which include the different purposes it can fulfil, the spatial and temporal scales it can operate at and mechanisms which are used to promote integration. Lastly, the role of the law in promoting spatial planning is considered. This is ascertained by considering issues of terminology, the content and scope, the purpose and status of legal instruments and how integration is provided for. This theoretical enquiry forms the focus of Chapter 2 and draws heavily on perspectives from Europe. A European focus is justified on the basis that that it has been argued that spatial planning arose in Europe, as the approach that was needed to address the social and environmental challenges due to economic development.

Furthermore, there is extensive literature available with respect to European spatial planning legal regimes. Contextualising this will enable an investigation into what place spatial planning has had in South Africa, and the role the law has played in promoting it while identifying the inherent issues and challenges that have persisted and subsequently arisen. Drawing from this theoretical analysis will enable the assessment of whether the reform is likely to address current issues and give effect to the planning needs and goals of South Africa. Chapter 3 analyses SA’s legal regime governing spatial planning and is divided into two main eras. The first section is the pre-SPLUMA era which aims to contextualise the spatial planning framework and laws that have occurred in South Africa and the Western Cape. The second era is the post-SPLUMA era where the new legal regime will be adapted to promote integration.

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56 Although the Land Use Planning Act 3 of 2014 (LUPA) in the Western Cape has been enacted it is still yet to come into effect.

57 Smith et al., 2011 (15) Journal of Coast Conservation 292.
unpacked, delaminating the form and role spatial planning is likely to have. To ensure consistency, both eras will be divided into four main sections. Firstly, an overview of the relevant spatial planning laws and instruments will be established. Secondly, the content, form and nature of the different spatial planning instruments will be discussed. Thereafter, the legislative status and purpose of the different instruments will be explored. Lastly, what provisions are made for integration of the spatial planning regulatory instruments with other relevant instruments and sectors will be explored.

The main conclusions are outlined in Chapter 4.
CHAPTER 2: UNDERSTANDING SPATIAL PLANNING

The purpose of this chapter is to explore what is meant by planning and more specifically spatial planning. The initial focus of this chapter is to contextualise the terms planning, land use planning, land use planning law and spatial planning. This is complex as the terms can be used differently in various parts of the world, encompassing different things and can be mandated by various authorities/bodies. The essential characteristics of spatial planning are then delaminated, the chapter then focuses on identifying the role the law can have in promoting spatial planning. This is explored through considering how terminology is used differently, the content, and scope, purpose and legislative status of spatial planning and its instruments. Lastly, avenues of integration within spatial planning and other sectors are explored.

2.1 Understanding Key Concepts: Planning, Land Use Planning and Spatial Planning

2.1.1 Issues of terminology

Planning or land use planning can be defined as ‘a formulated or organised method according to which something is to be done, a scheme of action’. Land use planning is concerned with the control and regulation of land and the development thereof. This gives rise to the notion that planning does not occur in a vacuum and involves other aspects of society such as economic, environmental, social and political issues. Recent times have seen the shift towards planning that is more integrated and a shift away from a focus on physical aspects which traditional planning was hinged on.

Land use planning necessitates a legal basis in order to be effective. Land use planning law involves the way in which society interacts with land, and involves the allocation and determination of land for certain uses. It is ‘that area of law which provides for the creation, implementation and management of a sustainable planning process to regulate land use, with the purpose of ensuring the health, safety and welfare of society as a whole and

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60 Ibid at 1; Smith et al., 2011 (15) Journal of Coast Conservation 292.
62 Berrisford 2011a (22) 238.
63 Purpose/long title of The Planning Act in Denmark Consolidated Act 813 of 2007.
taking into account environmental factors’. In essence, land use planning law involves the determination of land use and the regulation and management thereof.

Confusion arises when delaminating what land use planning law comprises of. Land use planning alludes to forward spatial planning, land use management and land development management. Different laws and instruments are used to give effects to these components. Determining what instruments give effect solely to spatial planning is no easy task, as overlap with the other areas of land use planning law occurs. Furthermore, different countries have different configurations of planning and spatial planning.

Prior to exploring different configurations of spatial planning, an understanding of what spatial planning, land use management and land development management is necessary. Various instruments have been utilised to give effect to land use planning over time. Early instruments consisted more of a land use management flavour which involves the regulation of land development. These approaches were reactive and examples include restrictive covenants, conditions on titles and zoning schemes. Historically, the effects of social and environmental processes were largely ignored. Consequently traditional planning instruments have proved inappropriate in dealing with current challenges, thus a shift to more strategic approaches has occurred, namely spatial planning.

Spatial planning is the avenue of planning that is used to affect the future use of land. The scope of which is broader than traditional planning, as spatial planning aims to ensure the coordination between sectors and government institutions. The purpose of spatial planning is largely guiding, playing an informative and persuasive role. This is different from land use management and land development management which aims to be prescriptive. The purpose of which is to ensure that land uses and the associated development rights are demarcated and prescribed. Commonly, regulatory and land use management schemes of land use management and development management are influenced by spatial planning or operate alongside spatial planning.

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65 Ibid at 5. This is the definition for ‘planning law’, it is argued that ‘planning law’ and ‘land use planning law’ allude to the same thing.
66 Ibid.
67 Wary Holdings (Pty) Ltd v Stalwo (Pty) Ltd & Another 2009 (1) SA 337 (CC) para 128.
69 Ibid.
71 Ibid, Todes et al., 2010 (34) Habitat International 415.
72 Ibid.
75 Ibid.
77 Ibid.
78 Ibid.
79 This is discussed further in Gawroński K, Van Assche K & Hernik J “Spatial Planning in the United States of America and Poland” 2010 Infrastructure and Ecology of Rural Areas, Polish Academy of Science 54, 65 and Douvère F & Ehler C “New perspectives on sea use management: Initial findings from European experience with marine spatial planning” 2009 (90)
One definition of spatial planning is impossible to find, however common elements of spatial planning can be found in various planning systems throughout the world. For the purpose of this dissertation, spatial planning is a broad and forward-looking concept which aims to take into account different elements of society, including environmental conditions, economic factors and social elements. Other terms which are used by various European countries that allude to the same thing, include strategic spatial planning and to an extent strategic planning.

There are a variety of instruments which have been utilised to give effect to spatial planning. These include policies, strategies, frameworks, guidelines, structure plans, spatial development frameworks/plans, spatial plans, strategic plans, regional plans and local plans. Generally these instruments serve the same purpose of being future orientated, broad instruments which seek to guide, however they can operate at different scales.

2.1.2 Essential Characteristics of Spatial Planning

Globally changing circumstances such as an increase of technology, globalisation, and a change in social and cultural interaction have led to new challenges. These challenges and associated spatial impacts have led to a shift in the planning systems across the world. Spatial planning has developed in response to economic, societal and environmental issues as a mechanism to manage and guide the way in which land is used. There has been the increased acceptance that planning is a multi-facetted discipline and an integrated approach is needed, resulting in greater utilisation and growth of spatial planning and its instruments. It plays a role in dealing with the interaction and ‘the problem of coordination or integration of the spatial dimensions of sectorial policies through a territorially-based strategy’. Spatial planning is an integrated, process orientated approach and is geared towards sharing responsibilities at the appropriate level of government.


Refer further to Todes et al., 2010 (34) Habitat International 415; Albrechts L “Strategic (spatial) planning reexamined” 2004 (31) Environment and Planning B: Planning and Design 743-744.


Ibid at 1488.

Smith et al., 2011 (15) Journal of Coast Conservation 291.

Ibid.


Eggenberger M & Rosário Partidário M “Development of a framework to assist the integration of environmental, social and economic issues in spatial planning” 2000 (18) Impact Assessment and Project Appraisal 203.
The aspiration of spatial planning is introducing a framework which operates over the long-term that allows for development and the coordination of other sectors of society. Another key aspect is that it can streamline efforts, avoiding overlapping and duplicated sectorial policies. Importantly, spatial planning is used to promote and achieve the three ideals of sustainable development, namely economic development, social development and environmental consideration. The increase in the commitment to sustainable development has promoted greater utilisation, reshaping and strengthening of spatial planning systems.

Spatial planning emerged in the 1960s and 1970s in a number of countries. One of the reasons spatial planning occurred was due to the growing recognition of issues such as fragmentation, growing unplanned developments, and rising environmental concerns. This prompted responses that were more strategic. Initially early forms of spatial planning informed the location, form, intensity and amount of land demarcated for certain activities. These spatial planning instruments served as guidelines but were often trumpped by other sector policies and agendas.

Broadening the scope of what spatial planning entails has affected the spatial and temporal scales at which spatial planning operates. Spatial refers to the ‘where’ of places, activities and things. Broadening the scope of spatial planning has increased the number of spatial dimensions which need to be considered. The notion of sustainable development underpinning planning systems has translated into the need to incorporate the social, economic and environmental issues and their spatial expressions.

Furthermore, due to the nature of spatial planning there is the challenge for it to work across spaces and spatial scales such as administrative and geographical boundaries. Consequently there is the need for spatial planning to be able to articulate perspectives and different issues on the national, regional and local scale. Ensuring that a system of comprehensive planning occurs at and between governments operating at different spatial scales. The temporal scale of spatial planning is complex as long term visions and ideals for areas need to be captured while ensuring that spatial planning influences short and long term actions.

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95 Ibid.
96 Ibid.
97 Albrechts 2004 (31) Environment and Planning B: Planning and Design 748.
98 Ibid.
100 Albrechts 2004 (31) Environment and Planning B: Planning and Design 749.
102 Actions include decision making and planning making. Albrechts 2004 (31) Environment and Planning B: Planning and Design 744, 747, 753.
One of the fundamental tasks of spatial planning is to harmonise and integrate activities and issues of society effectively.\textsuperscript{103} In the realm of spatial planning, three dimensions of integration are of importance, namely substantive integration, sectorial integration and spatial integration.\textsuperscript{104}

Difficulties associated with integration are rife as a drive towards achieving the three pillars of sustainable development often conflict in practice.\textsuperscript{105} This is complicated by different sectors and their activities as well as different levels/spheres of government operating over different spatial scales.\textsuperscript{106} Globally, countries are in various stages of transition to spatial planning systems.\textsuperscript{107} Examples exist where planning has adopted a crucial role in the drive towards sustainability whereas in other instances, environmental spheres have developed separately with separate legal and institutional machinery, resulting in parallel systems with attempts at integration between the two.\textsuperscript{108}

Typically, ineffective integration results in fragmented systems with inherent confusion and duplication of activities which can be costly.\textsuperscript{109} This occurs both between sectors and different levels of government.\textsuperscript{110} In contemporary planning times a key level that planning takes place is at local authority/government.\textsuperscript{111} This has been recognised as a key player in shaping and giving effect to planning. Consequently, greater roles and responsibilities have been afforded to this level of authority and the structure and character of local government has a significant influence on how spatial planning operates.\textsuperscript{112}

Effective integration that spatial planning requires is often inhibited by turf wars’ between the different sectors which results in numerous rules and regulations.\textsuperscript{113} A big drive towards integration and challenging departmental and organisational barriers is evident in the plan making process, where there is the requirement for consultation from different administrative levels and sectors of government.\textsuperscript{114}

\begin{itemize}
\item \textsuperscript{103} Eggenberger & Rosário Partidário 2000 (18) Impact Assessment and Project Appraisal 203.
\item \textsuperscript{104} Albrechts 2004 (31) Environment and Planning B: Planning and Design 753.
\item \textsuperscript{105} Todes et al., 2009 (24) Planning, Practice & Research 413.
\item \textsuperscript{106} Eggenberger & Rosário Partidário 2000 (18) Impact Assessment and Project Appraisal 203.
\item \textsuperscript{107} Economic Commission for Europe (2008) 2.
\item \textsuperscript{108} Eggenberger & Rosário Partidário 2000 (18) Impact Assessment and Project Appraisal 204; Todes et al., 2009 (24) Planning, Practice & Research 411.
\item \textsuperscript{109} Albrechts L “Shifts in strategic spatial planning? Some evidence from Europe and Australia” 2006 (38) Environment and Planning A 1158.
\item \textsuperscript{110} Ibid.
\item \textsuperscript{111} Her Majesty Government (2007) 116.
\item \textsuperscript{113} Van den Broeck 2008 (13) International Planning Studies 262.
\end{itemize}
Importantly, spatial planning aims to ensure integration in terms of objectives and functions as well as processes. Due to the nature of planning it is not possible to plan a country in one document or using one instrument, instead there needs to be a combination thereof. As systems are in various stages of implementing spatial planning and utilisation of spatial planning instruments, it is important to recognise the link between spatial planning, land use management and development management instruments. As these regulatory instruments, such as zoning give effect to, and implement the policies and plans which have been developed in the realm of spatial planning. Furthermore, spatial planning instruments are being used in conjunction with, or replacing traditional instruments, requiring effective integration.

2.2 Role of Law in Promoting Spatial Planning

2.2.1 Relevant Spatial Planning Laws, Instruments and Use of Terminology

Planning systems across the globe differ for a variety of reasons as the form, nature and outcomes of the planning system are context specific and are influenced by various practices and relationships. These include the actors, cultural attitudes and ideologies, the policies and the commitments. Furthermore, institutional and administrative structures of a country effect the way in which planning occurs and is mandated.

Planning terms which are commonly used have different implications in different countries or regions which is further complicated when translating terms between different languages. The meaning of which are usually given context and effect in the country's planning laws. This highlights the need for an effective legal framework and embedded instruments to give effect to the planning system. Key mechanisms which are incorporated into

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115 Albrechts 2006 (38) Environment and Planning A 1158.
117 Ibid at 21.
119 Ibid.
120 By way of example what one country defines as a territory can have a population of less than half a million inhabitants whereas another territory can consist of several million people. European Commission (1997) 25; Healey 2004 (28) International Journal of Urban and Regional Research 46.
121 An example of this is local plans, which in Denmark regulate local land use and are legally binding, whereas in England they are guiding instruments which do not prescribe binding regulations. European Commission (1997) 25.
122 Examples of long standing spatial planning legal frameworks are in the Netherlands (Wet op de Ruimtelijke Ordening, (WRO)) and in Germany (Raumordnungsgesetz (ROG)) both enacted in 1960s and have undergone amendments. Refer further to Needham B "The New Dutch spatial planning Act: Continuity and change in the way in which the Dutch regulate the practice of spatial planning" 2005 (20) Planning Practice & Research 327; Pahl-Weber E & Henckel D "The Planning
the legal frameworks include goals, principles, guidelines and statements which seek to guide planning activities. Conversely, some of these features can be incorporated into other instruments such as policies and programs.

The legal framework commonly provides for policies, perspectives, plans and frameworks which are intended to provide spatial planning guidance and can be developed on various administrative levels. When developed on a national level, these usually prescribe for the entire country. Frameworks are instruments which contain a general spatial pattern and they outline the general framework for the designated area and usually rely on regulatory instruments to be implemented. Locally developed frameworks and to a certain extent local plans, are widely utilised throughout Europe and are commonly the contemporary locally developed planning instrument. These have statutory homes in spatial planning laws or other relevant Acts.

2.2.2 Content and Scope

The content and scope of spatial planning and its instruments differ in different jurisdictions, as the instruments are related to the strategic issues of importance to the jurisdiction. Generally, the content and scope of spatial planning instruments are prescribed for in the relevant planning laws. Usually, the planning laws contain provision for what and how instruments need to be developed and implemented. In certain instances
where the laws do not provide the content, authorities are mandated to develop rules and regulations regarding the content of instruments.\textsuperscript{136}

Commonly the legal framework identifies the principles and goals of the planning systems as well as delaminating the scope of planning processes and activities.\textsuperscript{137} Generally, the common trend is for legal frameworks to set out the roles and responsibilities of different levels of government, however in some cases this can occur in specific policies.\textsuperscript{138}

Strategic/spatial plans are long term plans, which contain frameworks, goals, visions, objectives, guidelines, principles and the form of development envisioned.\textsuperscript{139} They are broad in nature and demonstrate a shift away from older detailed plans.\textsuperscript{140} Implications of economic and social policy on land use are usually outlined as well as the priorities of the political system.\textsuperscript{141} The size of the country, the population and how government is structured influences the content and scope of these plans.\textsuperscript{142} Often they cover specific administrative areas such as a province/region, however they can be developed for functional regions or special areas.\textsuperscript{143}

As previously highlighted, most jurisdictions utilise frameworks which can be created at all levels of authority.\textsuperscript{144} Commonly, the frameworks contain general spatial patterns of an area, ideal future spatial patterns, the general distribution of infrastructure, areas of conservation and patterns of development for the designated area and usually rely on regulatory instruments to be implemented.\textsuperscript{145} In some countries the content of frameworks facilitate and support the development of relevant policies for specific priorities.\textsuperscript{146}

\textsuperscript{136} See for example S54 ss6 The Planning Act in Denmark Consolidated Act 813 of 2007.
\textsuperscript{137} See for example the Polish Spatial Planning and Development Act 2003. Gawroński et al., 2010 \textit{Infrastructure and Ecology of Rural Areas} 53.
\textsuperscript{138} Examples of this include the Spatial Planning Decree 1999 (Flanders) which identifies the obligations of different levels of government, in the Netherlands this is captured in the Nota Ruimte (National Strategy) and in the WRO under each type of instrument. For more detail regarding different roles and responsibilities that different levels of government can have refer to Economic Commission for Europe (2008) 15-18. Refer further to Van den Broeck 2008 (13) \textit{International Planning Studies} 261; Nadin & Stead 2008 (172) \textit{disP – The Planning Review} 42.
\textsuperscript{140} Watson V “The planned city sweeps the poor away: urban planning and 21st century urbanisation” 2009 (73) \textit{Progress in Planning} 168.
\textsuperscript{142} European Commission (1997) 57-58; Müller H & Siebold M “Land Use Control and Property Registration in Germany–Procedures, Interrelationships, IT Systems” (Conference proceedings) 2007 \textit{International Federation of Surveyors, Hong Kong} 3.
\textsuperscript{143} See for example Art 12 of the Law on Spatial Planning (Kosovo) 14 of 2003 for plans that are developed for a special area such as a national park; Commission for Europe (2008) 22, 38.
\textsuperscript{144} Ibid at 38; European Commission (1997) 54.
\textsuperscript{146} In England the NPPF contains the framework from which specific policies are developed such as the PPS which have an important role in outlining the Government’s stance on planning related issues. NPPF (2012) 1.
Associated with strategic spatial planning, is the growth of regional planning which has occurred in response to a shift to a more strategic focus.\textsuperscript{147} The contents of regional plans are hard to define as they differ in different countries. In some countries the contents of regional plans which are described in the legal framework include, giving effect to planning principles and the intended spatial structure.\textsuperscript{148} Regional plans can highlight general locations for intended uses or they can contain much more specific detail and identify specific locations.\textsuperscript{149} However, regional plans commonly build upon the detail found in national strategies and policies.\textsuperscript{150}

National plans, perspectives and policy guidance are relatively common across Europe. National perspectives or plans contain the spatial development pattern of the area, highlighting territorial impacts and general location of development.\textsuperscript{151} National policy and guidance usually contains general principles, goals and objectives that the spatial planning system is hinged on.\textsuperscript{152} Policies generally have a broad scope containing the government’s general policy which applies to the whole jurisdiction/area.\textsuperscript{153} From which more detailed or sector specific policy containing the specific sector’s priorities and visions can be developed.\textsuperscript{154}

At the local level spatial planning laws commonly provide for locally developed plans or local plans. Generally these contain the general view and overarching guide to land use.\textsuperscript{155} This instrument can outline the future ideal of land use and importantly, identify the criteria for the preparation of other plans such as zoning schemes.\textsuperscript{156} Whereas in other jurisdictions, an instrument at this level can contain the strategy as well as the land-use regulatory instrument.\textsuperscript{157} This can include the general land use, infrastructure and zoning patterns of the area which are often captured in maps, in the frameworks.\textsuperscript{158}

\textsuperscript{147} Commission for Europe (2008) 22; refer generally to Albrechts L, Healey P & Kunzmann K “Strategic Spatial Planning and Regional Governance in Europe” 2003 (69) APA Journal 113-129.
\textsuperscript{148} See for example Art 2 S7(1)-(2) of ROG; Pahl-Weber et al., 2006 COMMIN Germany 15.
\textsuperscript{149} See for example the Landesraumordnungsprogramm (Austria) which is a much more specific and detailed plan. European Commission (1997) 175.
\textsuperscript{150} Economic Commission for Europe (2008) 16-17.
\textsuperscript{151} Spatial development perspectives are produced in Austria (Österreichisches Raumordnungskonzept) which provide guidance on territorial and sectorial planning. Other variations of this exist such as the Danish (Landsplan persekativ) which identifies all the goals for future development up to 2018 and contains all the current national policies. European Commission (1997) 55-56.
\textsuperscript{153} European Commission (1997) 51.
\textsuperscript{154} See for example National Policy Statements (England) which are part of the overall policy framework and drawn up for various sectors of society, the contents of which deal with the issues and needs of that sector. European Commission (2000) at 55, 56. See for example Department for Communities and Local Government (2008) Planning Policy Statement 12: Local Spatial Planning (PPS 12 (2008)).
\textsuperscript{155} Ibid at 3.
\textsuperscript{157} This occurs in Denmark where the municipal plan consists of a strategy and land-use regulations. Galland & Enemark 2012 Planning for States and Nation/States: A TransAtlantic Exploration 18.
2.2.3 Purpose and legal status

A legal framework is crucial for a spatial planning system as it prescribes how the spatial planning system will operate.\(^{159}\) One of the main functions of spatial planning legislation is prescribing mandates, roles and responsibilities. This enables the development and implementation of spatial planning, land use management and development management instruments.\(^{160}\) Prescribing this brings spatial planning into the realm of other legal disciplines such as constitutional and administrative law. In certain jurisdictions, constitutional law plays a key role in delimiting the powers and responsibilities of different spheres/levels of government.\(^{161}\)

Importantly, a common trend is for the legal framework to facilitate planning activity. This includes prescribing principles and criteria which guide and inform planning activities such as plan development and decision-making/authorisations.\(^ {162}\) This importantly creates a way of thinking for authorities when performing administrative duties.\(^ {163}\) Spatial planning instruments generally have an informative/persuasive or prescriptive legislative status.\(^ {164}\) Instruments which have a prescriptive status will bind authorities in their administrative duties.\(^ {165}\) Whereas instruments which have more of a persuasive status commonly guide planning authorities.\(^ {166}\) Furthermore, the legal framework and instruments can clarify the relationship between issues which include different rights, different plans and what rights/plans prevail in certain circumstances.\(^ {167}\)

Policies, perspectives, guidance and frameworks serve the purpose of identifying what the government’s planning policy and strategy is.\(^ {168}\) The aim of these instruments is to guide and support planning, the development of other instruments and outlining the criteria from which development can take place.\(^ {169}\) Furthermore, instruments can be required to give effect to plans developed at different levels.\(^ {170}\)

\(^{160}\) European Commission (2000) 64.
\(^{161}\) See for example Switzerland, where the Constitution outlines roles, obligations and responsibilities of the different levels of planning authority. Swiss Federal Office for Spatial Development (2008) Spatial Planning and Development in Switzerland 33.
\(^{164}\) Refer to Albrechts 2004 (31) Environment and Planning B: Planning and Design 744-745
\(^{165}\) Ibid. Wording in the legal framework such as ‘binding’, ‘accordance’ and ‘must not contradict’ allude to a prescriptive legal status. An examples of this is structure plans (Switzerland) that are binding for authorities. Swiss Federal Office for Spatial Development (2008) 34.
\(^{166}\) Wording in the legal framework such as ‘guide’, ‘inform’, ‘have regard to’ and ‘observed’ allude to a persuasive legal status. See for example German objectives and principles of regional plans which need to be observed in the decision-making process. Art 1 S4(1)-(2) of ROG; refer to Albrechts 2004 (31) Environment and Planning B: Planning and Design 744-745.
\(^{167}\) See for example the Polish Spatial Planning and Development Act 2003 which provides for the relationship between property rights and spatial development plans. Gawroński et al., 2010 Infrastructure and Ecology of Rural Areas 54.
\(^{169}\) Ibid at 26, 51-52.
A common purpose that the legal framework and other instruments serve is capturing and promoting the goals, visions and principles which underpin the planning system. An example of this is facilitating sustainable development and ensuring that social, development and environmental issues and considerations occur. Goals and principles are extensive overall concepts that seek to provide direction and guidance on ideals to strive towards. The legal status of goals and principles is usually informative and serve as guidance, however there are jurisdictions where they have more of a prescriptive status.

Generally, the status of spatial planning instruments are persuasive, which inform and guide planning activity both in terms of spatial planning and sectoral planning. Furthermore, the legal status of spatial planning instruments can be affected by requirements of administrative law as spatial planning is hinged on processes and decisions which bring planning into the realm of administrative action. Instruments can be given more weight due to provisions which require authorities to fulfil their roles and responsibilities in a manner that is administratively just. This can involve certain requirements that authorities need to follow such as taking a relevant spatial planning instrument into account. Consequently, failure to do so will fall foul of just administrative action. In this way spatial planning instruments which are informative and persuasive by nature can be afforded greater weight.

2.2.4 Integration

Widening the scope of what spatial planning encompasses has required the need for effective integration. This requires horizontal and vertical integration which needs to happen between different administrative planning authorities and in terms of different sectors.

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171 See for example the Nota Ruimte (Netherlands) which identifies the national spatial policy and vision and see Regional Spatial Strategies (RSS) which identify the spatial vision for a region (UK). Ministry of Infrastructure and the Environment (2011) 21; Her Majesty Government (2007) 98. Refer generally to European Commission (2000) 9, 156.

172 See for example Art 1 S1(2) of ROG which prescribes for it in the law or NPPF (England) which identifies the stance on sustainable development in a framework. NPPF (2012) 2.


174 In Germany it can be argued that goals have a prescriptive status as they are binding requirements and need to be followed. Whereas principles have a persuasive status as they need to be taken into account by authorities when carrying out their mandates. See Art 1 S3 & S4 of ROG; Pahl-Weber & Henckel 2008 Academy for Spatial Planning Research ARL 70.

175 Refer generally to the WRO (Netherlands) which makes numerous references to activities being subject to the General Administrative Law Act (Algemene wet bestuursrecht) 1994.

176 See for example Art1 S4 of ROG.

A common trend of vertical integration is the requirement in the legal framework for conformity and mandatory alignment between plans developed at different tiers/spheres of authority. At the local level/sphere there is generally the requirement for mandatory alignment of locally developed plans/frameworks with plans which have been developed at different levels/spheres and different sectors. Furthermore, consultation and regard to other spatial plans is frequently required when developing plans.

Strategic spatial planning in various countries has demonstrated significant innovation and advancement in coordination and integration between sectors and functional areas of government. It provides the opportunity to enable other sectors to comprehend the spatial dimensions of their sector and the overall pattern of spatial development that is intended. In terms of vertical integration it has the potential to influence and direct planning at lower levels. Commonly, the intention of establishing the regional level of planning has been pursuing the coordination of spatial planning and sector issues and policies, with a focus on horizontal and vertical integration.

As previously discussed, one of the key elements of spatial planning is sustainable development and ensuring that environmental consideration takes place. The drive towards this notion in planning, is captured in the legal frameworks and numerous instruments. One of the biggest challenges faced by spatial planning in terms of sustainable development is the co-ordination and harmonisation of policies developed in different sectors. Evidence of integration in terms of sectors policies exist where sectoral strategies and policies are incorporated into planning instruments. Furthermore, sector priorities and issues can also be given effect to in the goals and objectives of the spatial planning system by producing integrated objectives and goals, such as that of sustainable development. An example of this is environmental considerations which can be incorporated into the various instruments which are developed at different levels. Another avenue of sectorial integration which

181 See, for example S10a ss2 & S11 ss4 of the Planning Act in Denmark Consolidated Act 813 of 2007.
183 See, for example S19 (1)-(2) of the Planning and Compulsory Act 2004, when developing local development documents.
184 Vincent 2007 Planning Practice & Research 46.
187 Refer further to Chapter 7 S1 of Planning and Building Act (Sweden) 2010; European Commission (2000) 76.
189 See, for example S33a ss2-3 of the Planning Act in Denmark Consolidated Act 813 of 2007; S5 of Planning Act (Northern Ireland) 2011; S39 of the Planning and Compulsory Act 2004.
191 See, for example England where the Department of Transport prepares the regional transport strategy which is included in the RSS. Whereas in Germany, structure plans need to be drawn up with all relevant sectoral plans taken into account which include transport, housing and environmental plans. Counsell et al., (2006) Town & Country Planning 243; Pahl-Weber & Henckel 2008 Academy for Spatial Planning Research ARL 73; Pahl-Weber et al., 2006 COMMIN Germany 43.
192 See for example the aims and goals of national planning policy (Scotland) which seek social, economic development and environmental conservation. The Moray Council (2007) 4.
193 On a national level the Nota Ruimte (Netherlands) contains successful strides towards sector integration of water resource management. This is demonstrated in section 7 of the English summary of the Nota Ruimte (2006) which is titled: “Going with the anticipated flow”. In Denmark spatial planning goals contained in the Denmark Towards the Year 2018 are formulated in respect to environmental concerns. Nota Ruimte (2006) National Spatial Strategy (Summary); European Commission (1997) 123-124. Refer generally to Van Assche K & Djanibekov “Spatial planning as policy integration: The need for evolutionary perspective. Lessons from Uzbekistan” 2012 (29) Land Use Policy 179.
exists in certain countries is the combination of different departments and ministries, which speaks to bridging the institutional divide.\textsuperscript{194}

The environmental sector is a prominent priority on national planning agendas.\textsuperscript{195} One of the main reasons why integration is so crucial for the environment is because decisions that involve land use are at the core of environmental issues.\textsuperscript{196} Consequently, environmental considerations have a significant place in the spatial planning arena and integration debates.\textsuperscript{197} This has led to the development and implementation of various mechanisms and instruments which aim to protect and conserve the environment.\textsuperscript{198} One of these mechanisms is the provision that planning instruments cannot contradict sector plans such as environmental plans.\textsuperscript{199}

A key mechanism that has been advocated to facilitate the drive towards sustainable development is linking environmental assessments to spatial planning.\textsuperscript{200} Environmental impact assessments (EIA) have been common practice in numerous countries at the project level.\textsuperscript{201} Recent trends have demonstrated a shift to pursuing strategic environmental assessments (SEA), which focuses on policies, plans and programmes and the environmental impact of these.\textsuperscript{202} It demonstrates a greater pro-active approach than the reactive approach of EIAs.\textsuperscript{203} Both, EIAs and SEAs have become common practice as they form an integral part of plans and the plan making process, ensuring that sustainable development occurs.\textsuperscript{204}

In other cases where strategies and sector priorities are not included in the spatial planning instruments, there is the requirement for spatial planning instruments to be read and used in conjunction with other sector policies.\textsuperscript{205} This is increasingly important as criteria for cross-consultation and integration can be required in planning activities. Commonly the legal framework prescribes for this in activities such as decision making.\textsuperscript{206} Furthermore, requirements for plan making consultation are common, where criteria can include taking into account

\textsuperscript{194} An example of this is in the Dutch planning system where the Ministry of Housing, Spatial Planning and Environment exists under one department (VROM); Marshall T “Infrastructure and Spatial Planning Netherlands” (Working Paper) 2009 Department of Planning, Oxford Brookes University
\textsuperscript{196} Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 4.
\textsuperscript{197} European Commission (2000) 111.
\textsuperscript{198} Ibid at 101.
\textsuperscript{199} See for example S11(ss4) & S13(ss4) of The Planning Act in Denmark Consolidated Act 813 of 2007.
\textsuperscript{200} Egenberger & Rosário Partidário 2000 (18) Impact Assessment and Project Appraisal 201.
\textsuperscript{201} Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 923.
\textsuperscript{202} Ibid.
\textsuperscript{203} Ibid.
\textsuperscript{204} See for example the UK system where various plans are subject to sustainability appraisals that review the economic, social and environmental issues of a plan refer to Planning and Compulsory Purchase Act 2004 S5(4)(a) for RSS and S19(5)(a) for development plan. In Germany it is required that environmental aspects are a key part of the land use planning process, which includes EIAs. Senatsverwaltung für Stadtenwicklung “Land Use Plan Berlin” (2009 Revised Edition) 2010 14.
\textsuperscript{205} See for example the Nota Ruimte (Netherlands) which aim is to coordinate and ensure the inclusion of other strategies, which are spatially significant in other sectors. In some areas where inclusion has not occurred the strategy needs to be read in conjunction with other sector strategies. Marshall 2009 Department of Planning Oxford 21-22.
\textsuperscript{206} See for example part 3.5, Art 3.5.1; Art 3.6.3 & Art 3.6.3 of WRO (Netherlands) which provides for the co-ordination of decisions in terms of implementing spatial policy at the municipal, provincial and central government level.
relevant plans from other sectors. Environmental plans which aim to protect and conserve areas of environmental importance are an example of this. Additionally, requirements for consultation during the plan making process to ensure integration can be prescribed for in the legal framework.

In terms of instruments, national plans, polices, frameworks and strategies have a key role to play in achieving governmental and sectoral integration by enabling coordination. This is achieved by identifying development perspectives that are integrated for the entire country.

This chapter demonstrates that understanding the content, scope, purpose and legal status of the different spatial planning instruments is important, as spatial planning is not, or does not, involve one single instruments but rather it is a combination thereof. There is no single exemplar for spatial planning, however common elements in systems across different jurisdictions can be found. Due to the scope of spatial planning there is a need for effective integration in order for planning systems to face the challenges and issues that arise. Different types and levels of Integration exist, and spatial planning systems and instruments need to be relevant to the circumstances experienced by the jurisdiction.

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207 See for example Art 2 S14 of ROG; S2ss2 the Planning Act in Denmark Consolidated Act 813 of 2007 where the planning report of the Minister of the Environment needs to be used when developing other plans.

208 Plans can be developed for specific areas such as coastal areas, this has occurred in Portugal where special coastal physical plans have been developed. Refer further to European Commission (1997) 101-103.

209 Refer to Chapter 5 S11 of the Planning and Building Act (Sweden) 2010.


211 Ibid.


214 Albrechts 2004 (31) Environment and Planning B: Planning and Design 748.
CHAPTER 3: EXPLORING SOUTH AFRICA’S SPATIAL PLANNING DISPENSATION

South Africa’s current spatial planning dispensation needs to be understood in terms of its geographical context and past social and political background which have shaped it.\(^{215}\) Historically South Africa, like numerous other countries, had a planning system which was focused on physical and spatial factors that translated into the control of development.\(^{216}\) The country faces immense social and developmental pressures, which are often pursued at the expense of environmental concerns. However, recently there has been an increase in the drive towards sustainable development.\(^{217}\) Having distilled key elements embedded in spatial planning legislation in chapter 2, the dissertation now turns to consider the legal regime which has governed spatial planning prior to and post the commencement of SPLUMA, in South Africa and in the Western Cape. This chapter is divided into two main eras which are pre-SPLUMA and post-SPLUMA. Each era is comprised of four main parts and initially an overview of the legal framework and issues of terminology are delaminated, followed by highlighting the content and scope of the spatial planning instruments. The purpose and legislative status of the spatial planning instruments are then discussed and lastly mechanisms of integration are explored.

3.1 Pre-SPLUMA

3.1.1 An Overview of the Relevant Spatial Planning, Instruments and Terminology

Regulation of land use occurred as early as the 1830s in South Africa and during this time, it predominantly consisted of restrictive covenants and official conditions.\(^{218}\) In the 1870s, a series of Gold Laws were implemented and towards the beginning of the twentieth century, subdivision took place.\(^{219}\) Planning in these early years was largely focused on the physical regulation of land use.\(^{220}\) The early forms and instruments of planning law largely originated from the UK and the United States of America.\(^{221}\)

In 1910, South Africa became the Union and was designated into four provinces.\(^{222}\) In each of the four provinces, provincial ordinances based on the UK planning system were drawn up and adopted, one of which

\(^{215}\) Ovens et al., 2007 Urban LandMark, Planact and CUBES 8.
\(^{216}\) Berrisford 2011a(22) Urban Forum 238.
\(^{219}\) Ibid.
\(^{220}\) Ibid.
\(^{222}\) These were the Transvaal, Natal, Orange Free State and the Cape Province.
occurred in the former Cape Province, namely the Township Ordinance.\textsuperscript{223} Embedded within these ordinances were avenues of forward planning in the town planning schemes which were implemented.\textsuperscript{224} Towards the middle of the twentieth century, zoning and town-planning schemes became common, demonstrating the strongly regulatory nature of the planning system in South Africa at the time.\textsuperscript{225}

The apartheid era had significant effects on the spatial planning and the spatial pattern of South Africa.\textsuperscript{226} The racial underpinning upon which planning was hinged lead to racial and economic zoning which resulted in unjust economic spatial patterns across the country.\textsuperscript{227} This was facilitated through a myriad of legislation and various institutional arrangements.\textsuperscript{228} Land was divided on a racial basis, which involved the designation of areas for certain races and a dichotomy of planning systems operated in the different areas.\textsuperscript{229} Provincial ordinances were concerned with the urban areas and similarly fell with what was deemed ‘white areas’ during apartheid rule.\textsuperscript{230} Areas which were set aside for black occupation, initially relied upon the Native Land Act,\textsuperscript{231} as well as the Black Administration Act\textsuperscript{232} to be set up.\textsuperscript{233} Furthermore, ‘black laws’ that involved land use planning which applied to these areas included the Development Trust and Land Act,\textsuperscript{234} Group Areas Act,\textsuperscript{235} Prevention of illegal Squatting Act,\textsuperscript{236} Black Authorities Act\textsuperscript{237} and Blacks Resettlement Act.\textsuperscript{238} These laws will not be discussed further due to the scope of this dissertation and the nature and content of these laws, which mainly consist of land use management flavour with limited spatial planning.\textsuperscript{239}

In 1967, national planning legislation was enacted through the Physical Planning Act (PPA).\textsuperscript{240} One of the instruments that the PPA 1967 provided for were guide plans.\textsuperscript{241} These are traditional spatial plans that were a key spatial planning instrument during this era that embodied a wider concept of planning and elements of forward

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\textsuperscript{223} 33 of 1934. The other ordinances were the Transvaal Townships and Town Planning Ordinance 11 of 1931, Orange Free State Townships Ordinance 20 of 1947, and Natal Private Township and Town-Planning Ordinance 10 of 1934. Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 5.
\textsuperscript{224} Urban Sector Network (USN) and Development Works “Scoping Study: Urban Land Issues” (Final Report) 2004 DFID 50.
\textsuperscript{225} Van Wyk & Oranje 2014 (3) Planning Theory 355.
\textsuperscript{226} Ibid.
\textsuperscript{227} Ibid.
\textsuperscript{230} Paterson (2015) 3.
\textsuperscript{231} 27 of 1913.
\textsuperscript{232} 38 of 1927.
\textsuperscript{234} 18 of 1936.
\textsuperscript{235} 41 of 1950 and 36 of 1966.
\textsuperscript{236} 52 of 1951.
\textsuperscript{237} 68 of 1951.
\textsuperscript{238} 19 of 1954.
\textsuperscript{239} Furthermore racially-based laws were largely repealed by the Abolition of Racially Based Land Measures Act 108 of 1991. Refer further to Van Wyk Planning Law (2012) 43-49.
\textsuperscript{240} 88 of 1967.
\textsuperscript{241} Van Wyk Planning Law (2012) 41.
\end{flushright}
planning. Planning legislative changes in the national sphere occurred when the PPA 1991 was enacted. One of the key implications of this was that guide plans were largely repealed, as this Act introduced national, regional development plans, regional structure plans and urban structure plans. Furthermore, the Act prescribed for transitional provisions to convert guide plans of the PPA 1967 to urban and regional structure plans.

South Africa’s transition to a constitutional democracy in the mid-1990s triggered legislative reform, to address the inherent social inequalities. Importantly this included the enactment of the Constitution, which had hefty legal impetus as equal rights were entrenched and all laws were now subject to it. The implications of this meant that rights had to be respected, protected, promoted, and fulfilled. Rights which are relevant to planning include the environmental right, just administrative action, and the enforcement of rights.

This era also sought to address the global planning shift towards an approach that strives towards sustainability and flexibility, in response to the rising complex challenges. In South Africa, democratic planning and the approach adopted, followed this trend with the desire to adopt strategic planning, offering greater spatial and socio-economic flexibility while planning for sustainable development which is not a simple matter.

An important change that the Constitution brought about was the introduction of three different spheres of government and dividing South Africa up into nine provinces. Consequently, previously separated areas were coordinated into nine provinces and numerous local municipalities. Legislative planning reform sought to develop a single system that was applicable everywhere and for everyone. Firstly, all planning laws which were racially based were amended, repealed and crossed off the statute books. This included all the ‘black laws’. Secondly, national reform occurred in 1995 with the introduction of the Development Facilitation Act 1995 (DFA), which aimed to bring the dichotomy of planning under one legal regime which mimicked the flavour of the Constitution. It was intended that the DFA would be an interim measure and the intention was for the Land Use Management Bill.

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242 Ibid at 41-42.
244 S4(1)(a), S4(1)(b), S4(2) and S22 of PPA 1991; Van Wyk Planning Law (1999) 99.
247 The Constitution states that ‘law or conduct inconsistent with it is invalid, and the obligations imposed by it must be fulfilled’ S2 of the Constitution.
249 S24 of the Constitution.
250 S33.
251 S38. For more rights relevant to planning refer further to Van Wyk Planning Law (2012) 50, 77, 583.
257 Todes et al., 2010 (34) Habitat International 416.
2001 to replace it, however it was never promulgated. Importantly, sections of the DFA were declared unconstitutional which affected the planning legal regime.

In terms of national planning policy, the National Physical Development Plan (NPDP) was developed and published in 1975. The development of the plan arose from recommendations and a desire for a national plan. During this era other policies which had implications for planning law were developed. After the transition to democracy and the need to address the ills of apartheid, the Reconstruction and Development Programme and the White Paper on South African Land Policy were published. The latter marked the beginning of South Africa’s program of land reform, facilitating land restitution, land redistribution and land tenure reform, all of which have relevance to, and effect planning law. Additional policies of relevance to planning, include the National Development Plan 2030 (NDP) which was published in 2012 and other policies such as the New Growth Path in 2012, and the Medium Term Strategic Framework 2014-2019 which support the NDP. It can largely be agreed that all of these promote economic development that is sustainable and address the ills of apartheid. One of the main ways this is envisioned, is through infrastructure development. This is important as the Infrastructure Development Act provides that large-scale strategic infrastructure projects can expedite planning procedures. Furthermore, the NDP acknowledges the role spatial planning needs to play in achieving its objectives.

Legal planning reform in the provincial sphere attempted to bring the provinces’ planning laws in line with the Constitution and the new planning landscape. This reform included the development of the KwaZulu-Natal Planning and Development Act, the Northern Cape Planning and Development Act, the Western Cape Land and

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259 This occurred in the Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (6) SA 182 (CC) case, refer to para 95.
263 White paper on reconstruction and development GN 1954 GG No. 16085 (23 November 1994).
269 Ibid.
270 23 of 2014.
273 6 of 2008.
274 7 of 1998.
Development Act,\textsuperscript{275} and the Gauteng Planning and Development Act,\textsuperscript{276} however the latter two failed to come into effect.

In the Western Cape, the Township Ordinance was later replaced by the Land Use Planning Ordinance (LUPO)\textsuperscript{277} which introduced structure plans.\textsuperscript{278} Structure plans represented an important instrument of forward planning in the Western Cape with a statutory backing.\textsuperscript{279} Although LUPO was developed in the apartheid era it has since been amended and has persisted in the democratic era, and has remained the primary planning law in the Western Cape.\textsuperscript{280} As previously mentioned, an attempt at provincial planning reform occurred in the Western Cape, which has failed to commence. However, contemporary reform is taking place as the Western Cape Land Use Planning Act (LUPA)\textsuperscript{281} was enacted in 2014, this Act is likely to commence in the near future. Another spatial planning instrument which has been developed in the Western Cape is the Western Cape Provincial Spatial Development Framework (WCPSDF), which was approved under a LUPO structure plan in 2005 and updated in 2009.\textsuperscript{282} The WCPSDF is currently being updated.\textsuperscript{283}

A key feature of contemporary planning systems is integrated development planning. The need for a broader instrument which ensured coordination, led the way for the development of integrated development plans (IDPs), which occur at the local government sphere.\textsuperscript{284} Local government’s role significantly changed as they were afforded greater legislative powers and functions.\textsuperscript{285} The Constitution was the primary reason for this as three distinct, interdependent and interrelated spheres of government were prescribed for with associated powers and mandates.\textsuperscript{286} The form, powers and functions of local government were additionally dealt with in the Local Government: Municipal Structures Act.\textsuperscript{287} IDPs and integrated development planning are mentioned in various laws, this includes the principles of the DFA.\textsuperscript{288} Additionally, the Local Government Transition Act,\textsuperscript{289} provides that

\begin{itemize}
  \item \textsuperscript{275} 7 of 1999.
  \item \textsuperscript{276} 3 of 2003.
  \item \textsuperscript{277} 15 of 1985.
  \item \textsuperscript{278} Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 925.
  \item \textsuperscript{280} Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 927.
  \item \textsuperscript{281} 3 of 2014.
  \item \textsuperscript{282} The city SDF was given status under S4(6) of LUPO. Table Bay District Plan Spatial Development Plan & Environmental Management Framework (2009) Technical Report 6; Glazewski & du Toit “Planning Law and the Environment” In \textit{Environmental Law in South Africa} (2013) 42.
  \item \textsuperscript{283} Western Cape Provincial Spatial Development Framework (WCPSDF) (2013) Draft for Public Comment 6.
  \item \textsuperscript{286} S44 of the Constitution, refer to Schedule 4 and 5 for government competences.
  \item \textsuperscript{287} 117 of 1998.
  \item \textsuperscript{288} S3(b) of DFA; Glazewski & du Toit “Planning Law and the Environment” In \textit{Environmental Law in South Africa} (2013) 13-14.
  \item \textsuperscript{289} 209 of 1993.
\end{itemize}
metropolitan councils must draw up and implement a metropolitan integrated development plan which encompasses aspects such as land use planning and transport planning. Furthermore, the Local Government: Municipal Systems Act (LG:MSA) was introduced in 2000 which required that each municipality draws up an IDP for their area of jurisdiction. One of the requirements of IDPs was the inclusion of a spatial development framework (SDF), which represents strategic planning.

It is impossible to consider land use planning without considering other sectors and the instruments which have emerged in these sectors in the two last decades. One of which is the environmental sector, where various environmental laws exist which are relevant to spatial planning and planning law. On a national level these include the National Environmental Management Act (NEMA), and the suite of laws which are implemented under this Act containing planning elements. These include the National Environmental Management: Integrated Coastal Management (NEM:ICMA), which prescribes for national and provincial coastal management programmes. The National Environmental Management Biodiversity (NEM:BA), which prescribes biodiversity, and bio-regional planning. Additionally, the National Environmental Management Protect Areas Act (NEM:PAA) governs protected areas.

3.1.2 Content and Scope

National planning which governed spatial planning was largely absent prior to the introduction of PPA in 1967, which prescribed for guide plans. Guide plans usually provided for a time period of up to 25 years. PPA 1967 provides that the competent authority/national minister could assign the development of a guide plan for a specific area which contained the guidelines for future spatial development of that area.

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291 S26(e) of LG:MSA; Todes et al., 2010 (34) Habitat International 416.
293 Chapter 5 of LG:MSA prescribes for IDPs. McDiarmid N “Implementing spatial planning for government” 2005 (3) IMIESA 31.
294 These sectors include transport, housing and environmental sector. SALGA 2011 South African Planning Institute 15.
299 Chapter 6 of NEM:ICMA.
300 Act 10 of 2004.
301 Chapter 3 of NEM:BA.
303 Claassen "Spatial planning with the Western Cape Province as a case study" in Environmental management in South Africa (2009) 931.
304 S6A(1) of PPA 1967; Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs and Development Planning 2012 3 SA 441 (WCC) (here after Shelfplett) para 8.
The structure plans which were developed under PPA 1991 contained guidelines for the future physical
development of an area, which incorporated the interest of all inhabitants and promoted orderly development.\textsuperscript{305} The nature of the guidelines are broad, however they can include that certain land can only be used for certain activities.\textsuperscript{306}

The next national planning law was the DFA which introduced land development objectives (LDO), which need to be prepared by local authorities and approved at the provincial sphere.\textsuperscript{307} The detail and content of these objectives are not clear but they do however, include services relating to health, water and transport.\textsuperscript{308} The application and use of LDOs has been fairly limited during the course of their existence.\textsuperscript{309} Furthermore the DFA contained principles and objectives of planning and spatial planning, the content of which are general in nature and relate to land development and decision-making.\textsuperscript{310}

National policies developed during this era were largely informative instruments which had broad scopes. The NPDP identified various planning instruments with the two main elements that the plan contained were a growth strategy and framework which identified planning regions that were recommended, based on a socio-economic basis.\textsuperscript{311} Additionally, the NPDP was underpinned by national planning which was spatially unbalanced.\textsuperscript{312} The NSDP (2003 & 2006) contains guidelines on spatial planning and infrastructure development, however it does not include actual spatial development plans.\textsuperscript{313} Importantly, the NSDP contains social, economic and environmental trends advocating for shared understanding of what these are, in terms of the national space economy.\textsuperscript{314} The NSDP was one of the first instances that identified where development was to take place.\textsuperscript{315}

Early provincial ordinances contained elements of spatial planning and land-use control.\textsuperscript{316} Ordinances contained the details and procedures which needed to be followed when developing town-planning schemes.\textsuperscript{317} These town planning schemes contained initial avenues of spatial planning which existed during the twentieth century, and usually prescribed for a period of between 25-30 years.\textsuperscript{318} They were only drawn up for land which

\begin{itemize}
\item \textsuperscript{305} S5 & S6 of PAA 1991.
\item \textsuperscript{306} S6(1)-(2); Kidd "Land Use and Planning" in \textit{Environmental Law} (2011) 212.
\item \textsuperscript{307} Harrison "Integrated development plans and Third Way Politics in Democracy and Delivery" in \textit{Democracy and Delivery} (2006) 195.
\item \textsuperscript{308} S28(a)-(d) of DFA; Glazewski & du Toit "Planning Law and the Environment" In \textit{Environmental Law in South Africa} (2013) 21.
\item \textsuperscript{309} Van Wyk \textit{Planning Law} (2012) 269.
\item \textsuperscript{310} Refer to S3 & S4 for principles and S28 for land development objectives of DFA. Van Wyk \textit{Planning Law} (2012) 91-94.
\item \textsuperscript{312} Ibid.
\item \textsuperscript{313} Ibid at 25.
\item \textsuperscript{314} SA NSDP (2006) 1.
\item \textsuperscript{316} Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 924.
\item \textsuperscript{317} Van Wyk \textit{Planning Law} (1999) 173.
\item \textsuperscript{318} Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 923.
\end{itemize}
fell within urban areas and typically consisted of a map, which designated areas based on intended uses and regulations that accompanied each area/zone.\textsuperscript{319}

In the provincial sphere, structure plans in the Western Cape were prescribed for by LUPO and applicable for a ten year time period.\textsuperscript{320} Different levels of structure plans were approved, the scope of which is broad, containing guidelines that covered aspects such as the requirements for development plans, urban renewal and urban design.\textsuperscript{321} The situation in the Western Cape was complex as structure plans could be developed in terms of LUPO and PPA 1991. Consequently, structure plans were governed by two different laws which were implemented at different spheres of government. This situation was further complicated by guide plans under PPA 1967 which were converted to plans under the PPA 1991 Act.\textsuperscript{322}

The scope and content of the WCPSDF 2009 is currently being reviewed for reasons that include the changing economic context, greater clarity in terms of planning roles and responsibilities and the development of plans such as the NDP.\textsuperscript{323} What the WCPSDF needs to contain, is highlighted in the 2013 draft.\textsuperscript{324}

The principles of the DFA advocate for integrated planning which led the way for the development of IDPs.\textsuperscript{325} IDPs are all-inclusive development plans at the municipal level which need to be revised annually.\textsuperscript{326} IDPs contain social and economic development planning in a broad manner as well as strategic planning.\textsuperscript{327} The LG:MSA brought about important changes for IDPs, as minimum contents for IDPs were introduced and principles used to guide the process.\textsuperscript{328} The IDPs contain the vision for long term development, local development priorities and objectives, an assessment of existing level of development, a SDF, operational strategies, a disaster management plan and a financial plan and performance indicators.\textsuperscript{329} Importantly they need to contain land use planning, transport planning, infrastructure planning and integrated economic development.\textsuperscript{330} IDPs need to be adopted and developed when municipal councils are elected, which is every five years.\textsuperscript{331} A crucial spatial component of IDPs is the SDF, which generally prescribes for a period of 20 years.\textsuperscript{332} The Municipal Planning and Performance

\textsuperscript{319} Ibid at 924-926, land which fell outside the urban areas was zoned rural and did not have town planning schemes. Refer further to Van Wyk Planning Law (2012) 278-281.
\textsuperscript{320} S4(8) of LUPO.
\textsuperscript{321} S5.
\textsuperscript{322} Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 16.
\textsuperscript{323} Refer further to WCPSDF (2013) 6, 10-11.
\textsuperscript{324} Ibid at 6.
\textsuperscript{325} Harrison “Integrated development plans and Third Way Politics in Democracy and Delivery” in Democracy and Delivery (2006) 195.
\textsuperscript{327} Todes et al., 2009 (24) Planning, Practice & Research 421.
\textsuperscript{328} Refer further to S26 of LG:MSA for minimum content of IDPs. Harrison “Integrated development plans and Third Way Politics in Democracy and Delivery” in Democracy and Delivery (2006) 198.
\textsuperscript{329} S26 of LG:MSA.
\textsuperscript{330} Schedule 2 of Local Government Transition Act 209 of 1993.
\textsuperscript{331} Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 930.
\textsuperscript{332} SDFs are required in terms of S26(e) of LG:MSA; Harrison & Todes 2001 (35) Regional Studies 69; City of Cape Town Spatial Development Framework (CoCT SDF) (2012) Statutory Report 8.
Management Regulations\textsuperscript{333} contains the details pertaining to SDFs. SDFs generally contain a spatial plan of the ideal spatial development and form of the area.\textsuperscript{334} The contents of which, identify the directions and growth for the municipality, an SEA, the direction on capital spending and the strategies and objectives of spatial form.\textsuperscript{335} Common elements include the urban edge, special development areas where growth must be directed and importantly, the desired patterns of development and land use.\textsuperscript{336}

3.1.3 Purpose and status

In terms of national legislation, the intention of the PPA 1967 was to create a framework for co-ordinating environmental planning, resource utilisation and land use planning.\textsuperscript{337} Furthermore, the purpose of the Act was to guide the compilation and approval of guide plans.\textsuperscript{338} Guide plans were intended to order and structure physical development for the areas they were drawn up for.\textsuperscript{339} As recognition grew that uncoordinated development could no longer occur, guide plans were afforded statutory backing, the purpose of which were to be organisational frameworks that were intended to be blueprints by nature, consisting of a comprehensive flavour.\textsuperscript{340} The legal status of these plans is unclear as they are policy plans, however everything done in relation to them must be consistent.\textsuperscript{341} Permission could not be granted for zoning, town planning or any other land law if it was inconsistent with the guideline.\textsuperscript{342} The status of guide plans were deliberated on in the Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs and Development Planning,\textsuperscript{343} stating that planning permissions may not be granted if they are inconsistent with the guide plan, advocating for a prescriptive status even though they are policy plans.\textsuperscript{344} Many short comings of guide plans have been identified, however they were a prominent land use planning instrument for a number of years.\textsuperscript{345}

The purpose of PPA 1991 is to promote orderly physical development and provide a framework for planning in which existing planning systems could exist, adopting a consistent approach through the hierarchy of plans.\textsuperscript{346}

\textsuperscript{333} GNR 7146 GG No. 22605 (24 August 2001).
\textsuperscript{334} Todes et al., 2010 (34) Habitat International 416.
\textsuperscript{335} Ibid; Harrison “Integrated development plans and Third Way Politics in Democracy and Delivery” in Democracy and Delivery (2006) 187; McDiarmid 2005 (3) IMIESA 31.
\textsuperscript{337} Long title of PPA 1967.
\textsuperscript{338} Ibid.
\textsuperscript{339} Harrison & Todes 2001 (35) Regional Studies 66.
\textsuperscript{341} S6A(12) of PPA 1967.
\textsuperscript{342} Ibid.
\textsuperscript{343} 2012 3 SA 441 (WCC).
\textsuperscript{344} S6A(12) of PPA 1967; refer further to Shelfplett para 8.
\textsuperscript{345} Van Wyk Planning Law (2012) 42.
\textsuperscript{346} These plans include a national development plan, regional development and regional structure plan. Long title of PPA 1991; Kidd “Land Use and Planning” in Environmental Law (2011) 213.
PPA 1991 largely repealed guide plans and introduced structure plans which were regarded as policy plans.\(^{347}\) The purpose of policy plans are ‘to promote the orderly physical development of the area to which it relates to the benefit of all its inhabitants’.\(^{348}\) Demonstrating a persuasive and informative flavour, however the legal status is complicated by land use management aspects such as zoning, town planning and subdivision which are not allowed to be inconsistent with the structure plan, alluding to a prescriptive status.\(^{349}\) PPA 1991 additionally provided an avenue for guide plans to be saved and converted into regional and urban structure plans.\(^{350}\) Thus affording them the status of urban and regional structure plans.\(^{351}\)

Changes to the national legal planning regime occurred with the introduction of the DFA, the purpose of which was to address the racially based planning Acts of the previous planning era.\(^{352}\) The main flavour of which is to ensure that development and land released is fast tracked, to address the ills of apartheid and ensure equality.\(^{353}\) This is coupled with international trends of planning which included sustainability, and achieving horizontal and vertical integration.\(^{354}\) One of the objectives the DFA was to ensure that ‘the current legislation incoherence must be transformed into an integrated, efficient and equitable planning and development system’.\(^{355}\) One of the aims of the DFA was to set out the tone from which provincial planning legislation that would replace the ordinances, would occur.\(^{356}\) Attempts were made at this but it has largely been unsuccessful as there are instances where a number of planning laws/ordinances, plans and objectives of the old planning order have persisted into the new democratic South Africa.\(^{357}\) Subsequently the DFA has operated alongside them.\(^{358}\)

Furthermore, the DFA was to create a policy framework which guides current and future development.\(^{359}\) It was intended that the principles in the DFA are to be far-reaching guidelines which guide the development and implementation of plans and decision-making.\(^{360}\) Additionally, the DFA principles seek to guide the principles contained in the provincial legislation.\(^{361}\) In the Municipality City of Port Elizabeth v Rudman,\(^{362}\) the principles of the DFA were examined which highlighted their purpose and status in guiding future land development.\(^{363}\) LDOs contained in the DFA represent an instrument which was initiated to guide integrated future land use and planning.

\(^{348}\) S5 of PPA 1991.
\(^{349}\) S5 & S27.
\(^{350}\) S27 & S37.
\(^{351}\) S27.
\(^{352}\) Claassen "Spatial planning with the Western Cape Province as a case study" in Environmental management in South Africa (2009) 928.
\(^{353}\) Ovens et al., 2007 Urban LandMark, Planact and CUBES 11; Van Wyk & Oranje 2014 (13) Planning Theory 356.
\(^{354}\) Ibid.
\(^{357}\) CoCT SDF (2012) 12.
\(^{360}\) These plans include the physical plan, structure plan, zoning scheme and transport plan, refer to S2(b)-(c) of DFA. Van Wyk Planning Law (2012) 92.
\(^{361}\) Ibid.
\(^{362}\) 1998 (4) BCLR 451 (SE).
The status of which is that they do not confer or take away rights, however, applications that are inconsistent with the LDOs may not be approved.\textsuperscript{364} This creates confusion over the status of LDOs, however the utilisation of them has been limited.\textsuperscript{365} Complications arose as parts of the DFA were declared unconstitutional in the case Johannesburg Metropolitan Municipality v Gauteng Development Tribunal,\textsuperscript{366} which has resulted in a planning legislative landscape which is similar to that of 1995.\textsuperscript{367}

The purpose of the NPDP was to guide and direct development towards the political and developmental ideals of the time.\textsuperscript{368} The intention of the NPDP was to be a physical development plan for South Africa which would depict the current and future development intentions of the government.\textsuperscript{369} The NPDP was the primary mechanism from which decentralised policy was carried out, which is achieved by providing a framework from which policies can be generated.\textsuperscript{370} The NPDP was never taken to the Cabinet for approval or afforded statutory backing but was acknowledged and accepted as guidelines from the public and private sectors.\textsuperscript{371} In terms of the NSDP, the purpose was for it to be an indicative tool for all spheres of government that provided guidance on spatial planning and infrastructure development.\textsuperscript{372} The perspective was intended to provide a framework that identified spatial priorities that were in line with the Constitution.\textsuperscript{373} It serves to guide and coordinate government action through principles, although it is not considered a development plan.\textsuperscript{374}

Ordinances were the primary legal regime which governed planning in the twentieth century.\textsuperscript{375} The main purpose of these ordinances was to ensure development was coordinated, harmonised and social welfare was enhanced.\textsuperscript{376} Early ordinances provided for town planning schemes and the purpose of these instruments was twofold. Firstly, it was to serve as an instrument for land regulation and control, and secondly, for long-term future planning.\textsuperscript{377} Town planning schemes were for a length of time the only planning tool that was available to local authority and key elements of forward planning were evident in this instrument.\textsuperscript{378} These schemes created confusion, as rights were conferred in terms of immediate land use and forward planning. In the Western Cape,
this changed with the enactment of LUPO which resulted in significant shifts from the old ordinance as long-term planning and land use management/control were separated.\textsuperscript{379}

Initially, structure plans were not afforded statutory backing, consequently they were often overlooked, only finding favour when they supported developments.\textsuperscript{380} Alternatively, they were regarded as non-statutory beings that outlined one of numerous possible futures.\textsuperscript{381} The status of which was relatively weakly persuasive.\textsuperscript{382} The introduction of LUPO provided a statutory home for structure plans. The purpose of structure plans was ‘to lay down guidelines for the future spatial development of an area which will most effectively promote the order of the area as well as the general welfare of the community concerned’.\textsuperscript{383} Structure plans under LUPO are long-term spatial planning instruments and importantly identify desirable types of development, the status of which is persuasive as they ‘do not confer or take away any right in respect of land’.\textsuperscript{384} This advocates for their use as informative guidelines.\textsuperscript{385} Further weight for structure plans occurs in terms of zoning/rezoning and planning applications, as they may only be approved if they are in accordance with the structure plan.\textsuperscript{386} Furthermore, planning applications and decision-making are bound by the grounds of desirability.\textsuperscript{387} A situation exists, where LUPO stipulates that planning permissions must be refused if a lack of desirability is evident. Structure plans have the potential to demonstrate a ‘lack of desirability’ upon which a land use application can be refused.\textsuperscript{388}

In the \textit{Shelfplett} case, it was highlighted that the structure plan was rooted in apartheid policy and unconstitutional.\textsuperscript{389} This prompted the evaluation of the status of structure plans and former guide plans in the Western Cape.\textsuperscript{390} It was declared that only six structure plans would be renewed until 2017, and the rest will no longer be applicable.\textsuperscript{391} Furthermore, the seven saved regional and urban structure plans (former guide plans) were withdrawn.\textsuperscript{392}

Additionally, in the Western Cape, the aim of WCPSDF is to give spatial expression to the development agendas of the provincial and national government whilst ensuring coordination, integration and alignment of

\begin{thebibliography}{10}
\bibitem{379} Ibid; Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 925.
\bibitem{380} Van Wyk & Oranje 2014 (3) \textit{Planning Theory} 355.
\bibitem{381} Ibid.
\bibitem{382} Ibid.
\bibitem{383} S5(1) of LUPO.
\bibitem{384} S5(3). Claassen "Spatial planning with the Western Cape Province as a case study" in \textit{Environmental management in South Africa} (2009) 925.
\bibitem{386} S5(2) of LUPO.
\bibitem{387} Mammon N “Provincial Land Use Legislative Reform Western Cape Province: Status Report September 2011” (Report) 2011 \textit{South African Cities Network} 5.
\bibitem{388} S36(1) of LUPO.
\bibitem{389} Refering to the Knysna-Wilderness-Plettenberg Bay Regional Structure Plan; Van Wyk J “Planning in all its (dis)guises: spheres of government, functional areas and authority” 2012 (15) \textit{PER/PELJ} 310. Refer to Department of Environmental Affairs and Development Planning (DEA&DP) (2012) Circular 14/2012 Western Cape Government.
\bibitem{391} Refer to 2.2 for list of saved structure plans, DEA&DP (2012) Circular 14/2012.
\bibitem{392} Refer to 4.1 for a list of withdrawn plans, DEA&DP (2012) Circular 14/2012.
\end{thebibliography}
programmes and plans. Furthermore, the purpose of the WCSDF includes readdressing the spatial legacy of the past, providing support for municipalities, guiding locally developed IDPs/SDFs and ensuring that the development intentions are communicated to society. There is no requirement for the development of a provincial SDF, consequently the WCPSDF was approved in terms of LUPO and has the same status as a LUPO structure plan. The status of which largely can be agreed to be informative/persuasive as the instrument needs to be taken into account.

The introduction of LG:MSA requires that municipalities prepare IDPs and SDFs. The purpose of IDPs is to provide a framework, from which integrated planning which encompasses a multi-sectoral approach can take place. The instrument seeks to achieve sustainability and sustainable development. At the local level the instrument informs spatial planning and guides local authorities. Decision-making and planning permissions are focal areas that IDPs intend to guide. An integral part of IDPs are SDFs, which essentially are the spatial expression of the IDP and facilitate the achievement of IDP objectives. The general purpose of SDFs is to provide guidance on future development and importantly highlight the spatial challenges faced and providing guidance for land use management. They represent strategic planning which focuses on flexibility and long term objectives, which is a shift away from older, more detailed and rigid plans. SDFs demonstrate progressive steps towards good spatial planning, however the nature and form differ drastically due to the lack specifics of what they need to contain.

IDPs and SDFs are afforded legal status as they are approved through the LG:MSA. The status of IDPs and the SDFs is confusing, as it is to ‘guide’ all development decisions and planning but it is further provided that it is ‘binding’ on the exercise of executive authority. The former wording gives it a persuasive flavour whereas the latter gives the instrument more of a prescriptive flavour.

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393 Van Zyl P “Provincial Approach to Development in the Western Cape” (Presentation to WCPDF Conference 2014) 2014 Western Cape Government: Environmental Affairs and Development Planning 29.
394 Ibid. This is not a complete list, refer further to Western Cape Provincial Spatial Development Framework (WCPSDF) (2009) Statutory Report: Directives and Guidelines 2.
395 S36(1) of LUPO.
398 Todes A “Regional Planning and Sustainability: Limits and Potentials of South Africa’s Integrated Development Plans” 2004 (47) Environmental Planning and Management 844.
399 Ibid at 849.
401 Harrison & Todes 2001 (35) Regional Studies 70.
402 CoCT SDF (2012) 8.
403 Harrison & Todes 2001 (35) Regional Studies 66; Ovens et al., 2007 Urban LandMark, Planact and CUBES 23; McDiarmid 2005 (3) IMIESA 31.
406 S35(1) of LG:MSA.
As highlighted earlier, the Constitution entrenched certain rights which are relevant to planning, one of which is the right to just administrative action.\(^{407}\) To give effect to this right, the Promotion of Administrative Justice Act (PAJA)\(^{408}\) was promulgated. This was significant for the planning domain as land use planning decisions constitute what is regarded as administrative action that needs to be lawful, reasonable and procedurally fair.\(^{409}\) The implications of this are that spatial planning instruments can be afforded greater weight in decision-making due the provisions of PAJA and the Constitution.\(^{410}\) This is particularly important for instruments which have a persuasive legal status as they are afforded greater weight in the decision-making context.

3.1.4 Integration

During the apartheid era the planning law landscape was complex and fragmented as a dichotomy of planning systems existed with limited mechanisms of integration.\(^{411}\) The introduction of the Constitution triggered wide scale legal reform, as numerous laws/plans/programmes/policies were developed to address the issues and challenges present in the legal system, including the planning regime. This necessitated the need for integration as many issues and challenges persisted from the apartheid era and new issues have arisen. Various mechanisms of integration have been utilised during the pre-SPLUMA era with different levels of success, although it can largely be agreed that the legal regime governing spatial planning is still fragmented and incoherent.\(^{412}\)

As discussed in chapter 2, integration is crucial for an effective spatial planning system.\(^{413}\) Integration has occurred substantively in terms of linking different issues such as sustainable development, between different sectors and at different spatial scales which involves linking national, regional and local planning. Through time, different legal frameworks have provided for the integration and harmonisation of spatial planning instruments with other relevant planning regimes. This has included compulsory plan alignment, cross-consultation and cross-representation of authorities during plan development, compulsory decision-making criteria and trumping mechanisms.

In terms of national legislation, integration was demonstrated by guide plans under PPA 1967 which were intended to co-ordinate and harmonise planning and policies that involved land use such as transport and infrastructure.\(^{414}\) Furthermore, trumping mechanisms were utilised, as LUPO structure plans were not allowed to

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\(^{407}\) S33 of the Constitution, refer to section 3.1.1.

\(^{408}\) 3 of 2000.

\(^{409}\) S33 of the Constitution.


\(^{411}\) Especially between planning ordinances and ‘black laws’.


\(^{413}\) Refer section 2.1.2 & 2.2.1.

be inconsistent with PPA 1967 guide plans.\textsuperscript{415} The implications of this is that PPA 1967 guide plans prevailed over the LUPO structure plan, demonstrating attempts at integration.\textsuperscript{416}

NPDP represented national policy that alluded to integration, however one of the major critiques of this plan was that it did not incorporate economic factors.\textsuperscript{417} Furthermore, this plan attempted to plan a country in one document, which was unsuccessful.\textsuperscript{418} One of the Purposes of the NSDP was to ensure that the environmental, economic and social objectives are pursued through coordinated government efforts.\textsuperscript{419} The intention is that each sphere of government needs to incorporate the approach and flavour of the NSDP ensuring strategic alignment and coordination.\textsuperscript{420} Merits of this instrument are evident, as the principles and overarching guidelines of the NSDP have influenced the principles and guidelines of the WCPSDF.\textsuperscript{421} Importantly, the NSDP highlights that a focus on just integration is not enough and that there needs to be the implementation of mechanisms and processes which facilitate coordination, integration, and alignment.\textsuperscript{422} In certain circumstances, the NSDP has not been supported strongly by different sectors due to impressions that some areas would be disadvantaged by its implementation.\textsuperscript{423}

The introduction of the Constitution had significant implications for integration in the planning domain as it introduced the Bill of Rights,\textsuperscript{424} one of these rights is the environmental right which meant that integration and promotion of this right needed to occur. Additionally, the Constitution provided for principles of co-operative governance, which promotes integration.\textsuperscript{425}

Elements of sectoral integration can be found in the DFA as the principles prescribe that economic, social, institutional and physical aspects of land development need to be facilitated and promoted.\textsuperscript{426} A general flavour of the DFA is the inclusion of environmental considerations through sustainable development.\textsuperscript{427} Principles include 'encourage environmentally sustainable land development practices and processes'.\textsuperscript{428} Adherence is required when plans and policies are formulated, demonstrating attempts at sectoral integration and plan alignment.\textsuperscript{429} These provisions demonstrated positive strides towards integration of the environmental sector as environmental authorisations were required in planning approvals.\textsuperscript{430} However, the primary aim of the DFA was to speed up

\textsuperscript{415} S4(11) of LUPO; Ketelbey H & Cummins P “Delegation in the Land Use Planning Ordinance” (Report) 1987 Cape Town City Council, City Planner’s Department Cape Town : City Planner’s Department 46.
\textsuperscript{416} Ibid.
\textsuperscript{417} Van Wyk Planning Law (1999) 94.
\textsuperscript{418} Ibid; Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 942.
\textsuperscript{419} SA NSDP (2006) 1 & annex C ii.
\textsuperscript{420} Ibid at 12.
\textsuperscript{421} WCPSDF (2009) 2.
\textsuperscript{422} Ibid at 11.
\textsuperscript{424} Chapter 2 of the Constitution.
\textsuperscript{425} Refer further to Chapter 3 of the Constitution.
\textsuperscript{426} Refer to S3 of DFA for guiding principles. Van Wyk Planning Law (1999) 29.
\textsuperscript{428} S3(1)(c)(viii) of DFA.
\textsuperscript{430} Kidd “Land Use and Planning” in Environmental Law (2011) 216.
development and the planning approval process, which meant environmental authorisations could be expedited and other laws suspended in various situations.\(^{431}\) Furthermore, trumping mechanisms are also prescribed for in the DFA as LDOs prevail over plans under PPA of 1991 and structure plans.\(^{432}\) However, as previously discussed, the use of LDOs have been fairly limited.

One of the issues of integration which has been evident in the pre-SPLUMA era was the persistence of ordinances. This was contemplated in the *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal*\(^{433}\) case where it was highlighted that,

‘The difficulty with these ordinances is that they apply only in those territories that formed part of the old Cape, Natal, Orange Free State and Transvaal Provinces. They have no application to the former “independent” homelands and self-governing territories, which were governed by a parallel system of planning legislation. Furthermore, the creation of the nine provinces has meant that there has been further fragmentation as each province may be subject to a multiplicity of territorially-based legislative regimes’.\(^{434}\)

Furthermore, complications have arisen with constitutionality of these ordinances such as LUPO in the Western Cape.\(^{435}\) An attempt at rectifying this was evident in the DFA as one of the intentions was that provinces would follow suit and develop provincial laws, which would replace old order ordinances.\(^{436}\) For various reasons which include political will, financial resources and capacity, this has not occurred in numerous provinces.\(^{437}\) In the Western Cape there was an unsuccessful attempt to replace LUPO with the Western Cape Planning and Development Act,\(^{438}\) but this failed to come into effect.\(^{439}\) Consequently, DFA operates in parallel with ordinances and demonstrates inefficient integration and alignment.\(^{440}\)

Structure plans have largely been replaced by IDPs/SDFs in terms of LG:MSA, however complexity exists in the Western Cape as LUPO is still effective.\(^{441}\) The implications of this are that structure plans/converted guide plans still have effect during this era.\(^{442}\) The problems associated with the persistence old order planning instruments have been demonstrated in courts. In the *MEC for Environmental Affairs and Development Planning*

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\(^{431}\) Refer to S51(2)(d) of the DFA; Kihato, M. *Integrating planning and environmental issues through the law in South Africa: learning from international experience* Unpublished LLM Research Report (University of South Africa, 2012) 35.

\(^{432}\) S29 of DFA; for further information on LDOs see Van Wyk *Planning Law* (2012) 269.

\(^{433}\) 2010 (6) SA 182 (CC).

\(^{434}\) Para 32.


\(^{437}\) Ibid.

\(^{438}\) 7 of 1999.

\(^{439}\) Claassen "Spatial planning with the Western Cape Province as a case study" in *Environmental management in South Africa* (2009) 927.

\(^{440}\) Ibid at 928.

\(^{441}\) Ibid at 927.

\(^{442}\) Ibid.
v Clairison’s CC,\textsuperscript{443} demonstrates the conflict that can arise between two spatial planning instruments which are governed by different laws. Situations have arisen where conflict is created between provincial and municipal governments between the desirability clause of structure plans and the municipal SDF.\textsuperscript{444} Theoretically the municipal SDFs should prevail over the structure plans, however there is confusion around whether this is the case.\textsuperscript{445} In Parkhurst Village Association v Capela & Others,\textsuperscript{446} the confusing status of the LG:MSA SDF was the issue. It is provided that the status of the SDF contained in the IDP prevails over the old order structure plans and converted guide plans.\textsuperscript{447} However confusion is still apparent as to whether this occurs.\textsuperscript{448}

A closer look at the Western Cape reveals that a disconnect between land use management and spatial planning occurs.\textsuperscript{449} One of the main reasons for this is the operation of two different laws which are implemented by different spheres of government.\textsuperscript{450} Consequently, the effect that spatial planning has had on land use management and decision-making is far from the intended situation.\textsuperscript{451} Attempts at addressing this are evident in the City of Cape Town, as the city attempted to bring IDPs/SDFs into the realm of provincial planning by approving the plan in terms of the structure plans provisions of LUPO and LG:MSA.\textsuperscript{452} The intention was to align spatial planning and decision-making.\textsuperscript{453} However, this has created a situation where the amendments of the SDF need to occur at the provincial level and the City (municipality) is the competent authority on most of the land use applications.\textsuperscript{454} This is problematic as a situation is created where two spheres of government are involved in planning activities, demonstrating the inherent issue of fragmentation.\textsuperscript{455}

One of the main purposes of integrated development planning is to facilitate and support institutional and sectoral integration and spatial co-ordination.\textsuperscript{456} Numerous evaluations of IDPs effectiveness have occurred, which demonstrate varied levels of success.\textsuperscript{457} Positive strides towards integration are evident in integrated development planning in terms of integrating various planning instruments such as spatial planning, zoning and environmental assessment.\textsuperscript{458} In terms of vertical integration, IDPs are intended to give practical effect to the principles and LDOs of the DFA.\textsuperscript{459} The SDFs forms a crucial instrument in ensuring coordinating government action and alignment as

\textsuperscript{443} (408/2012) [2013] ZASCA 82.
\textsuperscript{444} SDFs in terms of LG:MSA and structure plans in terms of LUPO. Mammon 2011 South African Cities Network 9.
\textsuperscript{445} Ibid.
\textsuperscript{446} [2010] JOL 25759 (GSJ).
\textsuperscript{447} S35(2) of LG:MSA.
\textsuperscript{448} Mammon 2011 South African Cities Network 18.
\textsuperscript{449} Steenkamp & Winkler 2014 (25) Urban Forum 346.
\textsuperscript{450} Ibid.
\textsuperscript{451} Ibid.
\textsuperscript{452} S4(6) LUPO and S34 of LG:MSA; CoCT SDF (2012) 2.
\textsuperscript{454} Ibid at 346.
\textsuperscript{455} Ibid; CoCT SDF (2012) 2.
\textsuperscript{456} Harrison & Todes 2001 (35) Regional Studies 66.
\textsuperscript{457} Harrison “Integrated development plans and Third Way Politics in Democracy and Delivery” in Democracy and Delivery (2006) 198.
\textsuperscript{458} Glazewski & du Toit “Planning Law and the Environment” In Environmental Law in South Africa (2013) 15.
\textsuperscript{459} Ibid at 15 and 25; Van Wyk Planning Law (1999) 152.
they have potential to be an effective integration tool for IDPs. The purpose of the SDF is to integrate areas which are fragmented and facilitate sectoral and spatial planning integration. Furthermore, they need to ensure that alignment between national and provincial spatial development goals, strategies and polices takes place.

A critique of numerous SDFs is that they are vague, broad and insufficiently link to the regulation and land use management. Consequently they were interpreted in numerous ways, causing a disconnect between the frameworks/plans and decision-making. Furthermore, there have been various instances where they have contradicted other policies. A prominent critique of why IDPs/SDFs demonstrate insufficient levels of integration is due to a lack of skills and capacity of municipalities, resulting in an inability to fulfil mandates. However, IDPs have demonstrated strides towards sector integration through focusing on the issues and challenges facing the municipality. Integration of issues of sustainability and environmental concerns are evident as local government is tasked with ensuring that the requirements of the environmental planning prescribed in the environmental Acts are reflected and given effect to. One of the key ways this is achieved is through SEA or preparing conservation plans. Furthermore, strategic environmental plans need to be incorporated into IDPs, demonstrating progressive steps towards integration. However it has been argued that more environmental consideration needs to occur while ensuring that planning is adapted to the local context.

Different levels of sectoral integration have been apparent throughout South Africa’s planning history. Sectoral integration during the pre-Constitutional era was fairly limited, this is demonstrated in situations such as infrastructure planning, which was intended to follow land use planning but took place in isolation resulting in fragmentation. Furthermore, developments in the environmental discipline and planning discipline occurred in isolation. In terms of integrating environmental concerns into planning the provincial ordinances which were a main planning instrument gave little weight to environmental concern and issues. However, LUPO states regard

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462 CoCT SDF (2012) 8.
463 Todes et al., 2010 (34) Habitat International 416.
466 Ovens et al., 2007 Urban LandMark, Planact and CUBES 6.
469 SDFs need to undergo a strategic assessment of the environmental impacts, Chapter 2, regulation 2(f) of GNR 7146 GG No. 22605 (24 August 2001), Todes et al., 2009 (24) Planning, Practice & Research 425.
470 Ibid at 426, these include water and waste plans; Harrison “Integrated development plans and Third Way Politics in Democracy and Delivery” in Democracy and Delivery (2006) 187.
471 Todes 2004 (47) Environmental Planning and Management 843.
472 Todes 2008 (53) SSB/TRP/MDM 11.
473 Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 933; Todes et al., 2009 (24) Planning, Practice & Research 417.
474 Ibid.
‘to the preservation of the natural and developed environment’ needs to occur when considering applications.\textsuperscript{475} Nationally, PPA required that environmental considerations occur within the planning process.\textsuperscript{476}

Although the environmental and planning spheres emerged separately during the apartheid era, institutional integration existed nationally prior to the Constitution in the form of The Department of Planning and the Environment.\textsuperscript{477} Institutional integration also occurred in the Western Cape with the merging of planning and environment into one department, the Department of Environmental Affairs and Planning (DEAD&P).\textsuperscript{478} Thus attempting to address the underlying barriers that institutional structures pose.\textsuperscript{479} Albeit this, it has been argued that in terms of legal procedures, to an extent the two sectors still function separately in the Western Cape.\textsuperscript{480}

Sectoral planning has been effected by the enactment of various environmental Acts which contain elements of spatial planning. Different levels of integration have been experienced, however in most instances, relatively weak integration between the planning disciplines has occurred.\textsuperscript{481} A common element between the two departments is that policies and laws for both have principles pertaining to sustainability.\textsuperscript{482} In practice it can be argued that sustainability in the planning discipline favours economic and social concerns, whereas there is an ecological bias in the environmental discipline.\textsuperscript{483}

NEMA which was enacted to give effect to the environmental right, contains provisions which have implications for land use planning.\textsuperscript{484} This includes principles which effect decision-making and are applicable throughout South Africa.\textsuperscript{485} The importance of these principles was highlighted in the Minister of Public Works and Others v Kyalami Ridge Environmental Association and Others,\textsuperscript{486} where it outlined the environmental principles contained in NEMA must be taken into account by other departments of government when preparing plans, which includes IDPs.\textsuperscript{487}

NEMA prescribes for integrated environmental management, which seeks to facilitate that environmental considerations are apparent in every stage of the developmental process.\textsuperscript{488} Importantly this includes the promotion of the principles of integrated environmental management into all decisions which have an effect on the environment, this would include land use planning decisions.\textsuperscript{489} Furthermore, listed activities of the EIA regime

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\textsuperscript{475} S36(2) of LUPO.
\textsuperscript{476} Todes et al., 2009 (24) Planning, Practice & Research 417.
\textsuperscript{477} Van Wyk Planning Law (1999) 94.
\textsuperscript{478} Glazewski & du Toi “Planning Law and the Environment” In Environmental Law in South Africa (2013) 43.
\textsuperscript{479} Todes et al., 2009 (24) Planning, Practice & Research 430.
\textsuperscript{480} Mammon 2011 South African Cities Network 19.
\textsuperscript{481} Ibid.
\textsuperscript{482} Todes et al., 2009 (24) Planning, Practice & Research 423.
\textsuperscript{483} Ibid.
\textsuperscript{484} Paterson (2015) 18.
\textsuperscript{485} Refer to S2 of NEMA; Claassen “Spatial planning with the Western Cape Province as a case study” in Environmental management in South Africa (2009) 928.
\textsuperscript{486} 2001 (3) SA 1151 (CC).
\textsuperscript{487} Para 68.
\textsuperscript{489} S23(2) of NEMA.
\end{footnotesize}
are prescribed for which can include certain development applications requiring environmental authorisations.490

NEMA further requires that environmental implementation and environmental management plans must be
formulated by departments which exercise functions that may affect the environment.491 These plans speak to
integration as the purpose of this is to ensure that co-ordination between departments, plans, policies and
principles and programmes occurs.492

In terms of integrated coastal management, NEM:ICMA requires that coastal management programmes
need to be prepared and adopted at a national, provincial and municipal sphere.493 Integration is prescribed for as
alignment and co-ordination between different spheres and programmes needs to occur.494 Additionally,
NEM:IMCA offers an avenue for alignment and integration between coastal management and land use planning
instruments.495 One of these is IDPs, as municipalities need to promote integration of coastal management
objectives and considerations into its IDPs and SDFs.496

NEM:BA contains an array of planning provisions which have implications to land use plans such as IDPs
and SDFs.497 These include the national biodiversity framework, bioregional plans, listed ecosystems, and
biodiversity management plans and invasive species control plans. The content of most of these plans advocate
for considerations and prescribing guidelines in land use planning and decision-making.498 Generally NEM:BA
requires that conservation, resource and land use, which is sustainable, be integrated and apparent in all levels of
planning (all spheres).499 Furthermore, a requirement for cross-consultation and cross-representation processes
are prescribed for by NEM:BA when adopting any of these plans.500 Additionally, plan co-ordination, alignment and
consistency are required between these plans and other environmental and land use planning legal frameworks.501
An example of this is that these plans cannot conflict with IDPs, SDFs and other land use plans.502

Furthermore, in terms of protected areas there is an extensive legal regime that operates, which has
relevance to land use planning.503 Two of these instruments include the management planning regime and the
National Protected Areas Expansion Strategy (NPAES)504 which are governed by NEM:PAA. The management
planning regime requires management plans to be developed for protected areas under NEM:PAA.\footnote{S37-S39 of NEM:PAA.} Importantly these plans need to ensure alignment between other environmental plans and land use plans.\footnote{S39(3)-(4).} Furthermore the NPAES identifies areas which need to be incorporated into land use plans and taken into account in the decision-making.\footnote{Refer to Government of South Africa, National Protected Areas Expansion Strategy for South Africa (2009); Paterson (2015) 30.}

Integrated spatial planning in terms of sectoral planning, specifically the environmental sector has had a relatively weak position during this era.\footnote{Claassen "Spatial planning with the Western Cape Province as a case study" in Environmental management in South Africa (2009) 934-935.} There is often conflict between the aims and objectives of policies which have spatial elements, resulting in a difficult task of developing effective spatial frameworks.\footnote{Harrison & Todes 2001 (35) Regional Studies 67. 2012 (4) SA 181 (CC).} \footnote{Mammon 2011 South African Cities Network 10.} \footnote{Abrahams & Berrisford 2012 South African Cities Network 14.} \footnote{Ibid.} \footnote{Ibid at 16.} \footnote{Landman (2002) CSIR 3.} \footnote{Ovens et al., 2007 Urban LandMark, Planact and CUBES 8.} \footnote{Ibid.} \footnote{Griessel J at 329B-F.} \footnote{Ibid.} \footnote{Van Zyl (2014) Western Cape Government: Environmental Affairs and Development Planning 29; Van Wyk & Oranje 2014 (3) Planning Theory 356.} Albeit this, in these changes clarity was not provided which was demonstrated in the \textit{Camps Bay Ratepayers and Residents Association and Others v The Minister of Planning, Culture and Administration (Western Cape) and Others},\footnote{2001 (4) SA 294 (C).} which highlighted that the current planning statutory framework is fragmented and cumbersome, which leads to inconsistent decision-making.\footnote{Griessel J at 329B-F.} The case highlighted that ‘vast bureaucratic machine to administer all these provisions. This inevitably leads to certain ‘practices’ which develop in the course of time in the administration of these pieces of legislation which may or may not necessarily correspond with the legislative regime’.\footnote{Ibid.} To address the current planning challenges national and provincial legislative reform has been embarked upon through SPLUMA.\footnote{Van Zyl (2014) Western Cape Government: Environmental Affairs and Development Planning 29; Van Wyk & Oranje 2014 (3) Planning Theory 356.}

\footnote{Importantly these plans need to ensure alignment between other environmental plans and land use plans.} \footnote{Furthermore the NPAES identifies areas which need to be incorporated into land use plans and taken into account in the decision-making.}
3.2 Post-SPULMA

3.2.1 An Overview of the Relevant Spatial Planning Laws, Instruments and Terminology

To be able to address the inherent challenges of the current planning system, it is important to comprehend how apartheid and democratic ideologies have shaped the planning system. In light of the issues of fragmentation and confusion which have been highlighted, this section aims to examine the likely effects associated with the planning reform triggered by SPLUMA.

A definition of spatial planning is not given by SPLUMA, however it captures crucial elements of spatial planning. These include development principles, norms and standards, integrated development plans and spatial development frameworks.

SPLUMA prescribes development principles which apply to spatial planning, land use management and land development and all organs of state and other authorities which implement legislation related to planning. Furthermore, SPLUMA provides for the development of norms and standards nationally which will have implications for planning activities procedures, land use management and land development.

IDPs which are governed by the LG:MSA remain the main planning instruments available to local authorities post the commencement of SPLUMA. Prior to the commencement of SPLUMA, SDFs were largely developed at the local level and formed part of the IDPs that were governed by the LG:MSA. Under the new planning dispensation, SDFs will now be governed by SPLUMA. Furthermore, SPLUMA provides that SDFs must be developed at the national, provincial and local level, and they may be drawn up at the regional level.

Importantly, the commencement of SPLUMA triggers the repeal of various laws inherent in the fragmented planning system. The Removal of Restrictions Act, PPA, Less Formal Township Establishment Act, and DFA are repealed with the commencement of SPLUMA. As previously discussed the legal regime governing

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521 Ovens et al., 2007 Urban LandMark, Planact and CUBES 8.
522 Proclamation of SPLUMA in GG No. 38828 (27 May 2015).
524 Ibid.
525 S6-7 of SPLUMA.
526 Ibid.
527 Refer to 3.1.1-3.1.3; Paterson (2015) 12.
528 Ibid.
529 Chapter 4 of SPLUMA.
531 84 of 1967.
533 113 of 1991.
534 S59 of SPLUMA.
spatial planning is not limited to planning law, the importance and implications of the Constitution and other laws of relevance to planning will largely still operate in the same capacity they did prior to the commencement of SPLUMA. The implications of this are that SPLUMA will operate alongside the LG:MSA and other relevant laws such as those developed in the environmental sector and the environmental planning instruments they prescribe for. Additionally, in terms of policy, SPLUMA and the instruments embedded within the Act will play a crucial role in achieving objectives of national policy, such as those contained in the NDP.

SPLUMA prescribes for a three sphere system, and provides the framework from which the nine provinces need to develop provincial Acts. Consequently, wholesale provincial planning reform is needed, where provincial Acts will mimic the flavour of SPLUMA and importantly, repeal the old ordinances. The provinces are in various stages of developing and implementing these laws. The Western Cape has been progressive in developing LUPA as the overall form, nature and content of LUPA embraces SPLUMA, however it has not commenced yet.

At the local sphere, SPLUMA requires municipalities to develop integrated zoning schemes, municipal planning tribunals and planning by-laws. Importantly these planning by-laws need to ensure that the planning issues in SPLUMA are regulated which includes issues under spatial planning, land use management and land development.

3.2.2 Content and Scope

SPLUMA importantly provides a uniform legal regime which governs spatial planning, land use management and land development management under one law which is applicable across South Africa. The contents of the development principles are prescribed for in SPLUMA, these include principles of spatial justice, spatial sustainability, efficiency, spatial resilience and good administration. Additionally, the national authority is

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535 See discussions in 3.1.1, 3.1.3 & 3.1.4; refer further to Paterson (2015) 14-36.
538 Van Wyk & Oranje 2014 (13) Planning Theory 357.
539 An example of this is LUPA in the Western Cape which replaces LUPO and other Acts, refer to S77 of LUPA for repealed laws.
540 The Kwa-Zulu Natal Planning and Development Act 6 of 2008 is potentially contemporary enough to undergo amendments that will align it to SPLUMA. The other provinces are in the process of drafting new Acts these include the Mpumalanga Planning Bill 2013, Limpopo Spatial Planning and Land Use Management Bill 2012, Eastern Cape Planning and Development Bill 2012, Northern Cape Spatial Planning and Land Use Management Bill 2012, Gauteng Planning and Development Bill 2012, North West Spatial Planning and Land Use Management Bill 2013 and the Free State Provincial Planning and Development Bill 2013.
541 Chapter 5 and 6 of SPLUMA.
542 Long title and S2.
543 S7.
mandated to prepare norms and standards, the scope of which will affect planning activities of provincial and local authorities.\textsuperscript{544}

SPLUMA has significantly changed the scope and scale at which SDFs are developed and operate, as national, provincial and local authorities are required to develop this instrument.\textsuperscript{545} Furthermore, SPLUMA importantly gives more guidance on what SDFs need to contain as the Act prescribes the content of the frameworks which was lacking under the LG:MSA regime.\textsuperscript{546} The inclusion of more detail on what the instruments should contain has the potential to aid plan development. Municipal SDFs contain greater detail than that of national, provincial and regional SDFs.\textsuperscript{547} Importantly, municipal SDFs need to provide for the short and long term, which are for 5 years and 10-20 years respectively, as a significant amount of planning activity occurs at the municipal level.\textsuperscript{548} The contents need to include provisions of population growth and demands for housing.\textsuperscript{549}

3.2.3 Purpose and status

SPLUMA advocates for long term strategic planning, across South Africa and a developmental approach of an overarching framework which will guide future development and regulate land use.\textsuperscript{550} The purpose of this is to ensure that effective and consistent spatial planning, land use management and land development occurs throughout the country, while promoting the inclusion of economic and social issues and co-operative governance.\textsuperscript{551} Additionally, the purpose of the Act is to ensure that development principles norms and standards are prescribed, and importantly ensuring that imbalances of the past are readdressed through fair spatial development planning and land use.\textsuperscript{552} Furthermore, a crucial purpose of SPLUMA is to coordinate and inform provincial and local planning.\textsuperscript{553}

The purpose of the principles are to guide and inform the content of all policies and plans which are to give effect to spatial planning, land use management and land use development.\textsuperscript{554} The development principles and norms and standards apply to all planning activities under SPLUMA and include decision-making and plan development, advocating for an informative and persuasive status of these instruments.\textsuperscript{555}

\textsuperscript{544} S8.
\textsuperscript{545} Chapter 4.
\textsuperscript{546} Refer to SPLUMA S14 (national), S14 (provincial), S19 (regional) and S21 (municipal) for contents of SDFs. Refer further to section 3.1.2.
\textsuperscript{547} S21 of SPLUMA.
\textsuperscript{548} S21(b)-(c). Pienaar et al., 2011 (26) SAPL 239.
\textsuperscript{549} S21 of SPLUMA.
\textsuperscript{550} S2; Pienaar et al., 2011 (26) SAPL 238; Van Wyk & Oranje 2014 (3) Planning Theory 357.
\textsuperscript{551} S3(a)-(e) of SPLUMA.
\textsuperscript{552} S3(c)-(f).
\textsuperscript{553} Paterson (2015) 11.
\textsuperscript{554} S6-7 of SPLUMA.
\textsuperscript{555} S6-8.
The purpose of all the SDFs, are to inform and facilitate guidance in terms of decision-making and the authorities’ discretion, in terms of SPLUMA or any other law which relates to land use and development.\footnote{556 S12(2)(b); Harrison & Todes 2001 (35) Regional Studies 65.} The wording of this alludes to an informative and persuasive status of SDFs. However, confusion is still apparent as it is prescribed that land development decisions may not be approved if they are inconsistent with the municipal SDFs.\footnote{557 S22(1) of SPLUMA.} The use of the word ‘must’ and ‘consistent’, demonstrates prescriptive flavour and raises questions of whether clarity is given.\footnote{558 Refer to S17(2) & S22(1).} A similar situation occurs with regard to the provincial SDFs which cannot confer, or take away, rights.\footnote{559 S17(3).} However, all provincial development plans and programmes must be consistent with the provincial SDF.\footnote{560 S17(2).}

The requirement of provincial SDFs has important implications for the Western Cape, as the WCPSDF potentially has a statutory home and defined purpose and legal status. This should address the issues of confusion that were raised due to the WCPSDF being approved as a LUPO structure plan.\footnote{561 Refer to section 3.1.3.}

The SDFs will further be tasked with giving spatial expression to the NDP.\footnote{562 McCusker & Ramuduli 2007 (173) The Geographical Journal 9.} At a national level the SDF will need to give spatial expression to the NDP itself, while coordinating and integrating other policies such as the Integrated Urban Development Framework.\footnote{563 Ibid; refer further to The Presidency Republic of South Africa, National Planning Commission (2012) National Development Plan 2030 (Executive Summary).} Similar expectations are conferred to the provincial SDFs which need to give spatial expression to the agendas of the NDP and other policies such as Growth and Development Strategies.\footnote{564 McCusker & Ramuduli 2007 (173) The Geographical Journal 9.} At the municipal level, the IDPs are a key instrument which will support and facilitate the NDP.\footnote{565 Ibid.}

It is evident from the above discussion that the spatial planning instruments embedded within SPLUMA mainly have a persuasive legal status that aim to guide and inform planning activities.\footnote{566 Paterson (2015) 12.}

### 3.2.4 Integration

The provisions and reform triggered by SPLUMA advocate for a significantly more integrated and coherent planning regime. Firstly, the principles and objectives facilitate a consistent and flexible approach to decision-making and provide a link between the spatial plans, land use management and land development.\footnote{567 Refer to long title and preamble of SPLUMA.} Furthermore,
when principles are adopted in plans such as SDFs and used to guide decision-making, alignment and consistency is created between the two.\textsuperscript{568}

In terms of spatial integration, the previous regime adopted different approaches for urban and rural development which were addressed in separate chapters in the DFA.\textsuperscript{569} SPLUMA seeks to overcome this through providing for the four levels of overarching frameworks (SDFs) which apply across South Africa.\textsuperscript{570}

As previously mentioned, one of the main approaches which has been advocated for integrated spatial planning is the tiered approach, where a national plan is developed effecting the development of provincial plans, which then cascade down into district plans and locally developed plans.\textsuperscript{571} This speaks to vertical integration, which is supported by the new legal regime as frameworks need to be consistent at different spheres of government.\textsuperscript{572} The frameworks are underpinned by a set of development principles, norms and standards, advocating for a consistent approach throughout South Africa.\textsuperscript{573} Additionally there is the requirement for participation and co-ordination to ensure SDFs are consistent and in harmony between the different spheres of government.\textsuperscript{574} One set of rules and guidance which needs to be adhered to and is applicable throughout South Africa promotes cohesion and provides clarity.

In the Western Cape, a number of structure plans have been saved from the previous dispensation and will still be effective, however structure plans are being phased out and will be replaced by SDFs.\textsuperscript{575} This will address issues that have arisen in the Western Cape such as spatial planning and land use management being governed by two different laws, namely LUPO and LG:MSA and two different spheres of government.

SPLUMA emphasises the importance of sectoral integration as the objectives seek to ensure social and economic inclusion as well as facilitating sustainable land use.\textsuperscript{576} One of the main aims of the new legal regime is to ensure compliance with environmental legislation and environmental consideration occurs.\textsuperscript{577} SPLUMA requires that other instruments such as environmental management instruments, bioregional plans and environmental management frameworks need to be taken into account and included into land use planning instruments.\textsuperscript{578} Furthermore, SDFs need to give spatial effect to and integrate policies and plans from other sectors.\textsuperscript{579} All of these provisions in SPLUMA are examples which promote positive sectoral integration which establishes horizontal and

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\textsuperscript{568} S 25; Steenkamp & Winkler 2014 (25) \textit{Urban Forum} 346.
\textsuperscript{569} Pienaar et al., 2011 (26) SAPL 238.
\textsuperscript{570} S6 of SPLUMA. Pienaar et al., 2011 (26) SAPL 238.
\textsuperscript{571} Berrisford 2011a (22) \textit{Urban Forum} 242.
\textsuperscript{572} S12(2)(a) SPLUMA; Pienaar et al., 2011 (26) SAPL 238.
\textsuperscript{573} S6, S7 & S8 of SPLUMA, refer further to chapter 4 which provides for SDFs.
\textsuperscript{574} S12(2)(a).
\textsuperscript{575} S16 of LUPA, structure plans will become provincial SDFs in terms of S4(1) of LUPA or are valid for a period of two years after the Act comes into effect.
\textsuperscript{576} S3(b) & S3(d) of SPLUMA. Pienaar et al., 2011 (26) SAPL 238.
\textsuperscript{577} S24(2)(b).
\textsuperscript{578} Refer to chapter 5.
\textsuperscript{579} S12(3)-(5).
vertical integration between the environmental discipline and spatial planning.\textsuperscript{580} Furthermore, when a situation arises where authorisations are required in terms of SPLUMA and other laws, the relevant authority may pursue separate or integrated authorisations.\textsuperscript{581} Thereby emphasising that the avenue exists for integration, however in this case the authorities are not compelled to do so.

The legislative reform demonstrates an approach which is proactive and a shift away from the control flavour inherent in previous legal regimes.\textsuperscript{582} Additionally, the introduction of SPLUMA advocates for better integration and strengthens the link between spatial planning, land use management and land development management.\textsuperscript{583} This is demonstrated as all aspects of land use planning have been brought under one uniform system and approach.\textsuperscript{584} Furthermore, the strengthening of this link and integration is evident in instances such as land use schemes need to give effect to and be consistent with the municipal SDFs.\textsuperscript{585}

\textsuperscript{580} Van Wyk & Oranje 2014 (3) \textit{Planning Theory} 363.
\textsuperscript{581} S30(1) of SPLUMA.
\textsuperscript{582} Van Wyk & Oranje 2014 (3) \textit{Planning Theory} 356.
\textsuperscript{583} Steenkamp & Winkler 2014 (25) \textit{Urban Forum} 347.
\textsuperscript{584} Ibid; Pienaar et al., 2011 (26) \textit{SAPL} 237.
\textsuperscript{585} S25(1) of SPLUMA.
CHAPTER 4: CONCLUDING REMARKS

Land use planning, and more specifically spatial planning and land use management, are highly complex issues. The range and depth of issues that planning now has to face and encompass has increased, and consequently a far more complex and ever evolving planning environment exists. Broadening of the scope of spatial planning has resulted in its encroachment into other sectors, necessitating the need for integration. Incremental and total planning reform has occurred in numerous countries to face the current and growing economic, social and environmental challenges. Planning reform in the 21st century seeks to place people at the forefront of planning decisions with an underlying focus on public interest. Planning reform is tasked with alleviating past issues while addressing current challenges and promoting sustainable development. This is no easy feat, requiring effective vertical and horizontal integration.

In South Africa, prior to SPLUMA a fragmented legal planning regime that is fraught with confusion and complexity existed. This is due to issues and challenges which arose prior to the Constitution which persisted into the democratic era. This situation has been exacerbated by issues which have arisen post the enactment of the Constitution. There is little debate that planning reform was needed in South Africa, as a situation existed that ‘cries out for legislative reform’, due to the dire planning situation.

The statutory home that spatial planning has had through South African history is complex and has been confusing at times. Initial avenues of spatial planning were limited in the twentieth century. During the Apartheid era a dichotomy of planning systems that were based on ensuring racial segregation operated, where different laws governed different areas. During apartheid, spatial planning was more prominent in the provincial ordinances and PPA of 1967 and 1991, all of which provided a statutory home for spatial planning. At the national sphere, PPA 1967 was the statutory home for guide plans which were prominent spatial planning instruments of its time. PPA 1991 replaced guide plans with a hierarchy of plans. LUPO, which was the provincial ordinance of the Cape Province and operated in the Western Cape provided the statutory home for structure plans. It is important to note that during this era spatial planning had forms in other laws. The transition to democracy had implications for planning regime. An attempt at integrating the dichotomy of planning systems under one uniform approach was evident in the enactment of the DFA. However, various flaws have arisen with regard to this Act which include

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585 Pienaar et al., 2011 (26) SAPL 237.
590 Claassen "Spatial planning with the Western Cape Province as a case study" in Environmental management in South Africa (2009) 936.
591 Ibid at 938.
592 2010 (6) SA 182 (CC) para 33.
594 Berrisford 2011b (22) Urban Forum 249.
sections being declared unconstitutional. Post the Constitution there was the requirement for integrated development planning in the form of IDPs which were mentioned by various Acts. A crucial component of the IDP is an SDF, both of which are provided for and governed by the LG:MSA. During this time the statutory home of spatial planning and its instruments was complicated by the persistence of old order ordinances such as LUPO. The commencement of SPLUMA has significantly changed the statutory home of spatial planning as one uniform approach and home of spatial planning now exists.

Initially, the content and scope of spatial planning was largely focused on the physical plan of areas for certain activities. This was largely expressed in town planning schemes which captured the way land was to be managed and allocated uses for demarcated areas. Guide plans and their successor structure plans were constructed and implemented unevenly across South Africa during this era. The nature of these instruments was broad, the content of which aimed to manage and control growth in certain areas. Structure plans were an important spatial planning development in South Africa and extensively utilised in the Western Cape. The content and scope of which were broad and contained guidelines for planning.

All municipalities are mandated to prepare IDPs, which were introduced in a staggered manner. The scope and contents of IDPs are prescribed for in the LG:MSA, which prescribes the core components of the instrument reasonably well. In terms of clarity of the content and scope of SDFs, it has altered significantly with the commencement of SPLUMA. Previously SDFs were required as part of a municipality developed IDP, this has changed under SPLUMA as SDFs are now required at the local, provincial and national level and can be created at the regional level. Furthermore, SPLUMA provides clarity on the content of what these SDFs need to contain.

The legal status of spatial planning instruments can largely be agreed to be persuasive which serve to guide and inform. However, confusion has arisen with regard to structure plans, guidelines and SDFs as the wording in certain Acts alludes to a more prescriptive status, this is perpetuated by different laws governing the instruments. Importantly, SPLUMA provides a uniform approach and home for the spatial planning instruments, rectifying the problem of different laws governing different instruments. The legal status of the spatial planning instruments under SPLUMA is persuasive and informative. However, it can be argued that confusion still exists with regard to the legal status of SDFs as SPLUMA provides that land development decisions must be consistent with certain SDFs.

Integration during the apartheid era was limited and one of the primary reasons for this was due to a dichotomy of planning systems which operated. Consequently, different laws governed different areas and were

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596 Todes et al., 2010 (34) *Habitat International* 416.
597 Ibid.
598 Refer to para 30-32 of 2010 (6) SA 182 (CC).
599 Claassen PE "Spatial planning with the Western Cape Province as a case study" in *Environmental management in South Africa* (2009) 931; Harrison & Todes 2001 (35) *Regional Studies* 69.
601 Ibid at 271.
602 Refer to section 3.2.3.
implemented by different authorities. Furthermore, the scope of planning was fairly narrow and environmental issues were largely neglected. In South Africa, the scope of what planning and environmental management entails has broadened in line with international trends. This has resulted in considerable overlap, due to sectoral departments operating in parallel to planning and creating dual processes. There is a definite lack of clarity and alignment, consequently ambiguity and confusion exists between the various laws which effect land use planning. However, over the past two decades there have been various legislative and policy interventions to try and address the issues which have persisted. Post the enactment of the Constitution and prior to SPLUMA there has been the rise of more integrated planning approaches, as the number of spatial planning instruments which have been tasked with horizontal and vertical integration has increased. Integration has occurred in terms of substantive issues such as sustainable development, in terms of sectors and spatial scales. This has resulted in attempts at integration with differing effects. These mechanisms include cross-consultation and cross-representation during plan development, compulsory plan alignment, trumping mechanisms and the prescription of compulsory decision making criteria. Furthermore, institutional integration in the Western Cape has occurred which demonstrates progressive integrational strides in terms of planning and the environmental sectors.

It has been demonstrated that there is a desire and need for a new system which links spatial planning and land use management that is flexible. The inclusion of spatial planning, land use management and land development all under SPLUMA demonstrates strides towards this. The flexibility that is needed involves fundamentals which speak to integration and alignment, while enabling adaptation to local circumstances. SPLUMA addresses this by providing a framework from which provincial Act can be developed, ensuring harmonisation and alignment. Additionally, integration is advocated as SPLUMA prescribes for principles, norms and standards and SDFs at all levels, requiring alignment and co-ordination between the different spheres of government.

The importance of sectoral integration is evident in SPLUMA as the objectives of SPLUMA seek to ensure social and economic inclusion as well as facilitating sustainable land use. Additionally in terms of the environmental sector, SPLUMA requires consideration and compliance with environmental legislation and the incorporation of environmental planning instruments into planning. One of the primary avenues for this is through SDFs which need to give spatial effect to, and integrate, policies and plans from other sectors. Furthermore, when a situation arises where authorisations are required in terms of SPLUMA and other laws, the relevant

603 Todes et al., 2009 (24) Planning, Practice & Research 423.
604 Ibid at 424; Harrison & Todes 2001 (35) Regional Studies 70.
606 Pienaar et al., 2011 (26) SAPL 237.
607 Owens et al., 2007 Urban LandMark, Planact and CUBES 16.
608 Ibid.
609 Van Wyk & Oranje 2014 (3) Planning Theory 357.
610 See for example S3 & S12(3)-(5) of SPLUMA.
611 S24(2)(b) of SPLUMA.
612 S12(3)-(5).
authority may pursue separate or integrated authorisations.\textsuperscript{613} Thus emphasising that the avenue exists for integration, however the authorities are not compelled to do so.

The reform that SPLUMA triggers demonstrates progressive steps towards a more coherent legal framework governing spatial planning in South Africa. The nature, scope and purpose of spatial planning has been significantly altered by SPLUMA from the previous spatial planning dispensation. How effective and coherent the new legal regime will be in practice, remains to be seen. With SPLUMA coming into effect as of 1 July 2015, these answers may come to light in the near future.\textsuperscript{614}

\textsuperscript{613} S30(1).

\textsuperscript{614} Proclamation of SPLUMA in GG No. 38828 (27 May 2015).
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