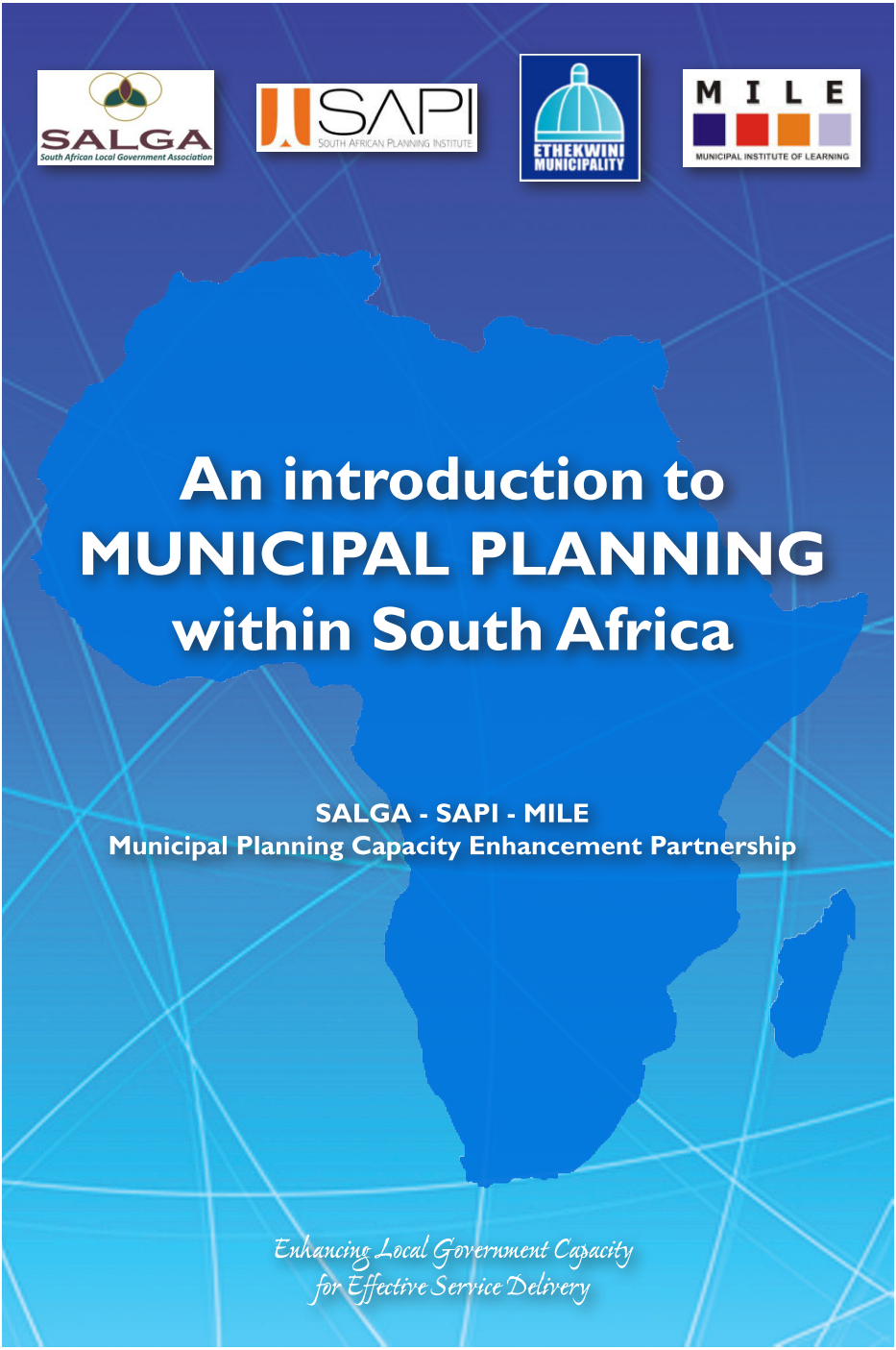

An introduction to MUNICIPAL PLANNING within South Africa

SALGA - SAPI - MILE
Municipal Planning Capacity Enhancement Partnership

Enhancing Local Government Capacity for Effective Service Delivery

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Authored by:
Mr John Forbes, Pr. Pln, on behalf of the Development Planning, Environment and Management Unit

Contributions by:
Ms Soobs Moonsammy, Mr Yusuf Patel, Mr Sogen Moodley, Mr Marx Mupariwa

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AN INTRODUCTION TO MUNICIPAL PLANNING WITHIN SOUTH AFRICA

1. Introduction & Purpose

This paper is aimed at providing a brief introduction to planning and particularly municipal planning in South Africa, with a view to giving new councillors an understanding of what planning entails, challenges experienced and their respective roles and responsibilities in this regard. It is not meant to be fully explanatory but is rather aimed at highlighting the different aspects of planning. Further reading is necessary if a greater insight is required, in this regard a suitable set of references are suggested for more information on the subject matter.

Planning in South Africa operates within a legal framework, which strives to ensure that municipalities deliver their developmentally-oriented planning objectives in terms of Section 152 and 153 of the Constitution . A balance is required to be struck between the various and often competing social, economic and environmental interests, and public and private interests, situated between and at national, provincial, regional and local level. All development is expected to be sustainable . In our planning context which is extremely legalistic and complex, property rights are managed through zoning as indicative rights of what is possible which is then assessed and managed through planning, environmental and building plan processes. The rights and responsibilities of owners and the protection of the public interest are through a well defined process/procedure.

The councillors for their part, after being advised or guided by their planning and other officials, are required to administer this process responsibly and effectively within the confines of the law.

2. What is Town/Urban and Regional Planning?

Town/Urban and Regional planning very simply put is the intentional arrangement or management of one's spatial environment on the earth's surface with a view to producing order out of what would otherwise almost certainly be chaos. How that particular order is obtained and the tools used in obtaining it, is what constitutes the science and/or art of town and regional planning.

The theoretical foundation of planning in South Africa and African in general is largely based on the old British Systems of Planning, commonly referred to as modernistic planning. This type of planning has a strong physical planning focus (with limited social, economic, environmental cultural aspects). It is largely based on the assumption that government will plan and direct all forms of spatial development and assume high levels of social influence to conform and to be legal, and government structures with capacity to ensure compliance. In 2009 the United Nations did the most comprehensive assessment of planning regimes and

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152. (1) The objects of local government are:
(a) To provide democratic and accountable government for local communities;
(b) to ensure the provision of services to communities in a sustainable manner;
(c) to promote social and economic development;
(d) to promote a safe and healthy environment; and
(e) to encourage the involvement of communities and community organisations in the matters of local government.
(2) A municipality must strive, within its financial and administrative capacity, to achieve the objects set out in subsection (1).
153. A municipality must _
(a) structure and manage its administration, and budgeting and planning processes to give priority to the basic needs of the community, and to promote the social and economic development of the community; and
(b) participate in national and provincial development programmes.

Sustainable development is the utilisation of resources in such a way as to meet human needs while simultaneously preserving the environment so that these needs can be met not only in the present, but also for future generations to come. In short it seeks to match concerns for the carrying capacity of natural systems with the challenges facing humanity.

confirmed that there is a desperate need to rethink planning for the 21st century. In essence planning for the 21st century must at a minimum support and be responsive to rapid urbanization and informality, poverty; planning justice, participation; safety and climate change.

3. What are the aims of Town/Urban and Regional Planning?

In producing order in the spatial environment it is desirable that better mental and physical health, economics, environment and social organisation be achieved for the general populous than may not occur if left to pure chance.

4. A Brief History of Planning

Town planning has been practiced for at least four thousand years. It would have first been practiced some time after early groups of people had initially given up their prior nomadic way of life and settled down permanently, initially in a haphazard way, with other people where water and food were readily available or cultivatable and thereby gradually enabling increasing degrees of specialisation of occupations to occur.

Town planning was probably originally the exclusive preserve of the priest class that emerged in the very early civilisations located in Sumer in Mesopotainia (Iraq), in the Indus valley and along the length of the Nile valley (Egypt/Sudan). Later planning was practiced throughout the greater Hellenic Empire (Greece/Turkey/Persia), the Roman Empire, China and the Olmec/Aztec/Inca Empires in Central and South America. Today, generally only the grand scale achievements of those early civilisations are still evident, although ongoing excavations are constantly unearthing new evidence that indicate that even the common man at the time benefited from town planning in these early ages.

The Byzantium (Eastern Roman centred on Constantinople/Istanbul) and the Sassanian (Persian) empires, followed by the Islamic empire expanded on the achievements of earlier empires that they had "inherited". Baghdad and Cairo being two of the new towns established during the latter's period of influence in the 8th and 10th centuries respectively by the Abbasid dynasty of Sunni Muslims and the Fatimid division of Shi'ia Muslims. In Africa the kingdoms of Ghana (in south eastern Mauritania – not the current state) followed by greater Mali were established in central western Africa, while the Zimbabwe kingdom was established in central southeastern Africa, in all cases certain planning principles were exercised in the layout of their towns.

Ready access to food supplies and water and communication with others, either by land, river or sea, were paramount factors in fixing towns' initial locations. Often military considerations were also significant factors in determining the location, final shapes and boundaries of these early towns. As an example, Baghdad was established as a new capital in an interceptory position trade-wise near where the Euphrates and Tigris Rivers approached one another.

The Renaissance period in Europe, with its city-states, brought about new grandiose endeavours of planning which sought to achieve beauty in the overall design of the towns, its buildings and its open spaces. It was however the industrial revolution in Europe that heralded the beginning of the modern era of town planning. This period saw the large-scale flight from the rural areas to the towns by those seeking job opportunities in the new industries. This led to the common people often living in squalor and experiencing major health epidemics. As a consequence the early town planning efforts in the United Kingdom was primarily focused on health improvements.

The colonial period saw the European powers export their culture and technology throughout the world. They established new towns, created largely along their traditional lines, wherever they settled, sometimes, when so doing, building on to or adjacent to earlier settlements of the indigenous peoples. These early towns often became the hub around which major future cities would grow in time. In the case of South Africa the new towns were usually formally set out in a very rigid grid iron pattern with little or no respect for the underlying physiology of the land. Zoning for different land use types played little or no part. It was only in the mid twenty century, as towns expanded outwards from the original core, that layouts, more sympathetic to the natural environment, emerged.

In the case of Durban, for example, it was not until the early nineteen fifties following the Second World War that mainly British born and educated town planners were brought out to South Africa with a view to introducing more modern and formal town planning controls. The first formal town planning scheme with zoning was adopted in 1953 for the Berea area of Durban, and only in the sixties were zoning schemes expended outwards for the so-call "added areas" of Durban. Ironically, the required setbacks from boundaries do not reflect the typical European towns but more that of the garden new towns such as Bourneville in the UK established by Cadbury in the countryside in 1861 for its industrial workers. This concept is now vigorously defended by both planners and the public and has unfortuantely contributed to the often experienced drabness of the black townships where the uniform set back is only the only open space and the opportunity to create meaningful space by the clever placement of buildings has been lost.

5. What is Municipal Planning?

Municipal Planning is a function assigned to municipalities in terms of section 156 of the Constitution of the Republic of South Africa read with Part B of Schedule 4 and in terms of which municipalities have both executive authority and a right to administer to the extent set out in Section 155.

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156. (1) A municipality has executive authority in respect of, and has the right to administer _
(a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5;and
(b) any other matter assigned to it by national or provincial legislation.
(2) A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.
(3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a by-law and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
(4) The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if _
(a) that matter would most effectively be administered locally; and
(b) the municipality has the capacity to administer it.
(5) A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.

Part B Schedule 4
The following local government matters to the extent set out in section 155(6)(a) and (7):
……..
Building regulations
……..
Municipal planning

There is no precise definition of exactly what aspects of planning are included under the term Municipal Planning. The Constitutional Court in a judgement given in June 2010 stated that "… the term [municipal planning] is not defined in the Constitution. But "planning" in the context of municipal affairs is a term which has assumed a particular, well-established meaning which ***includes the zoning of land and the establishment of townships. In that context, the term is commonly used to define the control and regulation of the use of land."***
Emphasis added.

From this narrow ruling by the Constitutional Court, it is clear that Municipal Planning embraces other, as yet, undefined and untested aspects of planning.

Under the 2000 re-demarcation of the country "wall-to-wall" municipalities were created thereby including all intervening land between the towns or former transitional local councils, i.e. including the tribal areas and the commercial farmland. This established a totally new responsibility for the new municipalities than had hereto been the case in that they were now required to extend their planning well beyond that of the former towns.

6. What is the legal framework under which planning operates in South Africa?

There is a considerable array of legislation that controls planning within the geographic boundaries of the Republic of South Africa. Some of the most important are as follows: -

a. **Constitution of RSA No 108 of 1996** – the primary role being the assigning of municipal planning responsibility to municipalities.
b. **Municipal Systems Act No 32 of 2000** – setting out in Chapter 2 the requirement, amongst other, for newly elected municipal councils to prepare and adopt an integrated development plan (IDP) for their respective areas and to provide for annual revision thereof. The IDP is required in terms of the act to include a spatial development framework (SDF) which must include the provision of basic guidelines for a land use system for the municipality.
c. **Development Facilitation Act No 67 of 1995 (DFA)** – originally envisaged as interim legislation post the 1994 national elections to facilitate accelerated housing delivery by waving other legislation and giving decision making to provincial Development Tribunals (where established), but utilized to a large extent by the private sector for the development of amongst others, shopping centres, golf course estates, etc. Section of this legislation have since been declared unconstitutional by the Constitutional Court as it usurped the decision making powers of municipalities and is required to be repealed or amended by June 2012. Note: Despite sections of the Act being declared unconstitutional by the court, its General Principles for Land Development, as contained in Chapter 1, Section 3 of the act, are still deemed valid.

CoJ v Gauteng Dev Tribunal - CCT 89/09 -2010

This has created a conflict of responsibility in that the Minister of Agriculture is effectively empowered in terms of the Subdivision of Agricultural Land Act 70 of 1970 to determine land use over the commercial farming areas. This has resulted in a lack of progress in municipalities creating wall-to-wall planning schemes in terms of their Constitutional mandate.

CoJ v Gauteng Dev Tribunal - CCT 89/09 -2010

d. **Less Formal Township Establishment Act No 113 of 1991** – this act provides for shortened procedures for the establishment of townships, for less formal forms of residential settlement and to regulate the use of land by tribal communities for communal forms of residential settlement. This act is administered by the provinces and it provides for the exclusion of certain laws and the suspension of servitudes and restrictive title deed conditions. Although not challenged as yet in the Constitutional Court, this law is also no doubt, like the DFA, unconstitutional as it shifts decision making from the municipalities to the provinces.

e. **Planning Acts and Ordinances in the provinces.** - The majority of legislation directly controlling planning in the nine provinces is still pre-1994 legislation enacted by the original four provinces of South Africa and they are all also generally unconstitutional in some or other aspect. Only in KwaZulu-Natal and in the Northern Cape has new planning legislation been enacted and put into effect since 1994 and even here certain aspects (relating to appeals) are challengeable. Some of the other provinces are in the process of drafting new planning legislation. As a result of the Constitutional Court ruling with respect to the DFA and the tardiness of the preparation of the new legislation in some provinces, the Department of Rural Development and Land Affairs recently published the Spatial Planning and Land Use Management Bill for comment and which it hopes to have enacted by June 2012. The respective provincial legislation is listed below: -

7. Current Planning Legislation in the Provinces.

The majority of the nine provinces are still relying on pre-1994 legislation formulated for the prior four province arrangement as illustrated below (in date of enactment order):-

a. Free State – Townships Ordinance No 9 of 1969
b. Eastern Cape - Cape Land Use Planning Ordinance No 15 of 1985
c. North West – Cape Land Use Planning Ordinance No 15 of 1985
d. Western Cape – Cape Land Use Planning Ordinance No 15 of 1985
e. Gauteng – Transvaal Town Planning and Townships Ordinance No 15 of 1986Limpopo – Transvaal Town Planning and Townships Ordinance No 15 of 1986
f. Mpumalanga – Transvaal Town Planning and Townships Ordinance No 15 of 1986
g. Northern Cape – Northern Cape Planning and Development Act No 7 of 1998.
h. KwaZulu-Natal - KwaZulu-Natal Planning and Development Act No 6 of 2008 (and vestiges of Natal Town Planning Ordinance No 27 of 1949 for special consents)

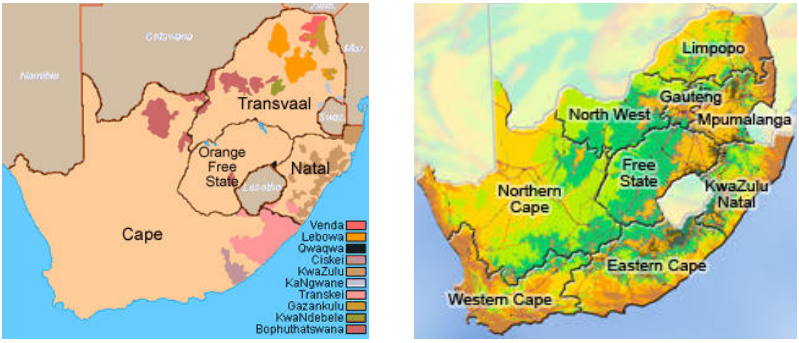

Figure 1 - Pre-1994 and Post 1994 Provinces of South Africa

8. Future Legislation

a. Spatial Planning and Land Use Management Bill (SPLUMB) – National legislation. Any new order provincial legislation in place it is envisaged will be able to exist in parallel. The two eventual acts in each case will obviously need to be dove-tailed where necessary to avoid potential conflict.
b. Western Cape Planning and Development Act No 7 of 1999 (when further amended).
c. Gauteng Planning and Development Bill.

9. Other Legislation affecting Planning

a. Subdivision of Agricultural Land Act 70 of 1970.
b. National Building Regulation, Act 103 of 1977
c. Physical Planning Act No 125 of 1991.
d. Housing Act No 107 of 1997.
e. National Environment Management Act No 107 of 1998 (NEMA) and its suite of associated Acts viz. NEM: Protected Areas Act, 2003; NEM: Biodiversity Act, 2004; NEM: Air Quality Act, 2004; NEM: Integrated Coastal Management Act, 2008; NEM: Waste Act, 2008.
f. National Heritage Resources Act No 25 of 1999
g. Promotion of Administrative Justice Act No 3 of 2000.
h. Planning Professions Act No 36 of 2002.
i. Social Housing Act of No 16 of 2008.
j. National Land Transport Act 5 of 2009.

10. The Hierarchy of Plans

A suite of plans is legally required to be prepared by the municipality ranging from a very broad level strategic plan encompassing the entire municipality down to a very detailed plan at which specific land use rights are assigned to individual properties. In addition there are other non-statutory plans which a local authority may or may not elect to prepare, based on its own particular circumstances.

The following plans are a likely suite of plans found with large cities in South Africa, different names may apply but intentions are largely the same to direct development from the strategic to the specific. :-

a. **Long Term Development Strategy** (LTDS). A plan with a twenty year plus time horizon setting out the vision of the municipality in achieving its development objectives. This plan is directly linked to the integrated development plan (IDP) and gives the longer term strategy direction for successive IDPs for the municipality that should otherwise be contained directly within the IDP. It however often common practice to see this as a standalone plan.

b. **Integrated Development Plan** (IDP). It is statutory plan required in terms of Chapter 5 of the Municipal Systems Act, 2000 encompassing all the functions undertaken by the Council within a 5 year time horizon guided by long term objectives and strategies (see LTDS above). The IDP is required to be updated annually. This strategic plan for the development of the municipality should link, integrate and co-ordinate

The time scale set for enactment by June 2012 to meet the Constitutional Court's requirements is probably over ambitious and an interim amendment of the Development Facilitation Act, 1995 may have been more appropriate.

various sector plans taking into account proposals for the development of the municipality, align the resources and capacity of the municipality for the implementation of the plan, form the policy framework and general basis on which annual budgets are set and in addition must be compatible with both national and provincial development plans.

c. **Spatial Development Framework** (SDF) – a spatial depiction of the IDP as required in terms of Section 26 (e) of the Municipal Systems Act, 2000. It is the principal strategic planning instrument which guides and informs all planning and development, and all decisions with regard to planning, management and development in the municipality. It must include the provision of basic guidelines for a land use management system (LUMS). Note the SDF supersedes or prevails over any plan that may have been prepared under the Physical Planning Act, 1991.

d. **Scheme** (variously called a town planning scheme or land use scheme). Normally prepared in terms of a provincial Ordinance or Act. This plan or series of plans, with it zoning maps and controls, forms the nuts and bolts of day-to-day development administration within a municipality. The scheme amongst other designates the zones and what activities may, or may not, be carried out in the respective zones whether by free entry or by (special) consent. The administration of the scheme in the main, when not initiated by the municipality, usually involves the consideration of rezoning and (special) consent applications brought by the public. The decisions of which can either be recommend by the administration for committee approval or approved by the administration through the process of delegation by the City Manger and relevant officials. It is imperative that Councils in particular Councilors create an environment for the adjudication of planning and building applications that are free any form of influence and to ensure that clear lines of separation between the administration and that of the political component of a Council.

e. **Other Non-Statutory plans** . These include a Spatial Development Plan, a Sector Plan, a Local Area Plan, a Nodal Plan, a Corridor Plan, a Precinct Plan, etc. These plans would normally sit between the SDF and the Scheme. The plans at different scales, usually give a greater level of interpretation of the SDF over a specific geographic area. These plans may also be hierarchical one to another. While giving greater indication of acceptable land use within a certain geographical area they do NOT confer land use rights. It is necessary for the Scheme to be amended to reflect these higher order plans before any land use rights may be conferred.

These plans are not requirements in terms of any specific legislation but are nevertheless considered and approved by the formal resolution of the Council.

Note: It is necessary that there be both upwards and downwards integration of the respective plans, with the IDP being the ultimate over arching plan.

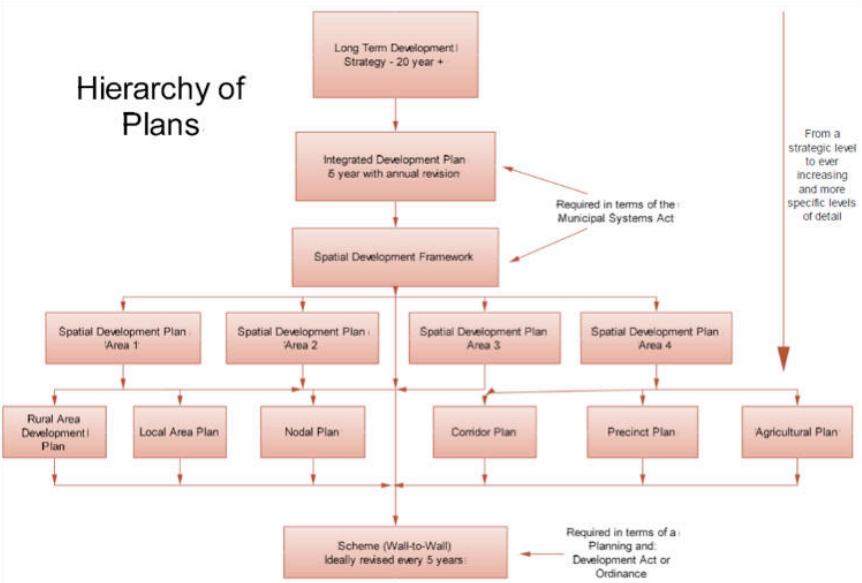

Figure 2 - Conceptual Hierarchy of Plans

Strategic Planning

Strategic planning provides a methodology which helps cities identify their strengths and weaknesses, while defining the main strategies for local development.

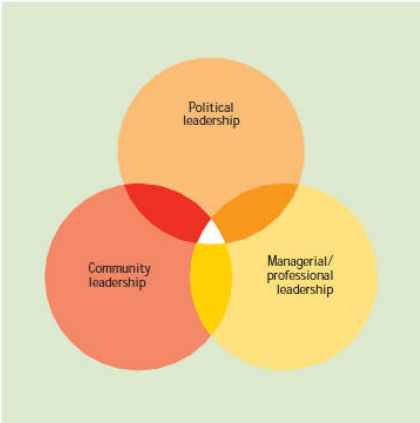

Figure 3 – Showing the three realms of local leadership forming core elements to governance. Ref Prof Robin Hambleton - Euro Congress 2010

Strategic planning helps decision makers select appropriate goals that steer towards that collective vision for the future, and is created through participation and partnership with citizens and stakeholders. Strategic planning differs from urban planning, and it complements other planning tools and usually results in a planning product such as a city development strategy. While land use planning, urban planning, comprehensive or integrated development planning are often legally binding instruments or laws, strategies are flexible tools for long-term orientation and enable revision and adaption to changing circumstances.

Following South Africa's democratic elections in 1994, the constitution provided for three spheres of government, each with specified powers and functions – national, provincial (9 provinces) and local (283 municipalities). Progress towards developmental local government based on the Local Government White Paper has occurred in three phases – establishment, consolidation and sustainability – which was expected to be complete for most municipalities by 2010. Alarmingly, a sizeable portion of municipalities seem still to be in the establishment phase (Department of Local Government and Traditional Affairs 2007).

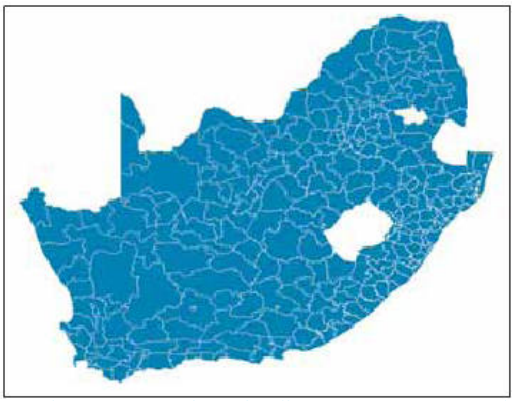

Figure 4 - Municipalities in South Africa (Source: electoral geography.com)

At local level, the boundaries of municipalities were re-demarcated in 2000, resulting, for the first time, in wall-to-wall municipalities across the country. Three types of municipalities now exist, Metropolitan Municipalities such as Johannesburg, Tshwane, Durban and Cape Town, and District Municipalities consisting of several independent Local Municipalities, each with different powers and functions.

A complex legislative and policy framework has been put in place to support local government in its new developmental obligations, accompanied by sweeping institutional changes designed to address the inequalities associated with apartheid. In some cases, however, there have been conflicting spatial outcomes. For example, the housing subsidy's promotion of stand-alone houses and the need for cheaper land has encouraged urban sprawl. This contrasts with the goals of efficient and sustainable development planning, which promotes compact and sustainable settlements, close to economic opportunities.

11. Land Use Management System (LUMS)

A LUMS consists of a scheme and a number of other tools to support the control and management of development within a municipality. A non-exhaustive list is as follows: -

a. **Scheme** - The scheme with its maps and controls, amongst other, designates the zones and what activities may, or may not, be carried out in the respective zones whether by free entry or by (special) consent. Note: A scheme on its own is not a LUMS. (See above).
b. **Rating Policy** – A policy set annually by a municipality in terms of the Municipal Property Rates Act, 2004. This may be used to encourage or discourage development in certain areas by the levying of different rates for different categories of properties or by granting exemptions, rebates and reductions in order to promote local, social and economic development.
c. **Enforcement** – enforcement tools to curtail illegal development and fix sanctions are normally contained in the respective provincial ordinance or act but may also be further reinforced in the scheme or other bylaws. Without an adequate enforcement capacity illegal activity will proliferate, lead to general disrespect of the scheme and eventually undermine the entire planning function of the municipality.
d. **Urban Edge** (sometimes known by other names such as the Urban Fence, Urban Development Line, etc.). The prime object of the Urban Edge is the prevention of unrestrained and unsustainable urban sprawl eating into productive agricultural land, discouraging densification, adding to traffic congestion and leading to the lack of, or unsustainable, services. The Urban Edge is normally reflected on the SDF and the immediate lower order plans but not on the Scheme map(s). This concept is also linked to an Urban Services Edge which is the limit of current or planned engineering services such as sewage and water reticulation.
e. **Development Charges** – This is a charge to ensure that the consumer of service infrastructure (both existing and future) for new proposed development pays for the infrastructure, rather than the municipality and so indirectly the ratepayers who would otherwise subsidize the development, and thereby avoiding unsustainable development. It is a relatively new tool and is currently utilised by only some municipalities in the country using various legislation. The National Treasury is currently driving a project which will see to more specific national legislation in the near future that will actively support Development Charges. Apart from being controversial as yet another charge placed on developers, its implementation needs to be mindful of different economic groups and the depressed current economic situation in the country. Consequently it is desirable that exemptions, partial exemptions and phasing be considered in its implementation.

See attached table showing the land use provisions for a typical zone.

12. Tools found within a Scheme

a. Land Use zoning – the scheme map with its designated zones.
b. Types of Zones (and Reservations)

   i. Residential (Low, Medium, High, Planned Unit Development, etc.)
   ii. Commercial (Shops and Offices)
   iii. Industrial (Service, Light, General, Heavy, Noxious, Extractive, Mining)
   iv. Open Space (Private, Active, Passive & Conservation)
   v. Administration
   vi. Institutional
   vii. Educational
   viii. Mixed
   ix. Agricultural
   x. Special Zones (for complex developments or where a land use does not readily fit into one of the above categories).

c. Permitted Land Uses

   i. Free Entry Uses
   ii. Consent Uses
   iii. Prohibited Uses

d. **Floor Area Ratio** – the maximum permitted ratio of the total floor area of the development to the site area.
e. **Coverage** – this represents a bird's eye view of a site and what can be covered by development. The maximum permitted percentage of the site area to be covered by the development's footprint.
f. **Height** – Usually expressed in floors, but sometimes in metres. Note: Cognizance needs to be taken of modern commercial developments where the floor to floor differences including ducting exceed the old set limits. This can also be reflected on a scheme map or overlay as a height above mean sea level (MSL).
g. **Density** – Usually expressed as the maximum permitted units per hectare for residential developments.
h. **Building Lines, Side Spaces and Rear Spaces** – The distance of a building from its various boundaries. Cognizance needs to be taken on the one hand of changing norms from when this concept was first introduced into SA schemes and the densification requirements of IDPs, and on the other hand the need for the provision of engineering services along the boundaries of erven and fire control aspects.
i. **Parking Standards** – requirements for the different types of land use for the parking of vehicles and loading of goods, while allowing for variances when public transport is to be utilized or encouraged,:.
j. **Control Overlays** – for the depiction of Geotechnical Unstable, Environmentally Sensitive (Biodiversity and Ecosystem Goods and Services), High Agricultural Value Land, Density, Height, etc. over both strategic and scheme mapping. A relatively unutilized tool, but with the more common usage of GIS (geographic information system) mapping by municipalities, with its far greater flexibility than static maps, it will likely result in the more common usage of overlays as a developmental tool, indicating to an owner what specific precaution/s are considered when assessing development potential of a site, given its specific location and unique qualities.

k. **Layout Requirements** – a requirement found in some zones for a detailed site development plan to be prepared and approved prior to the submission of building plans.
l. **Advertisements** – the controls of undesirable advertisements in terms of the scheme and/or in terms of the SAMOAC (South African Manual for Outdoor Advertising Control). This policy and by-laws manages signage and advertising in a City/Council

13. Application Approval Process

Land Use applications by developers, be they for rezoning or (special) consent, follow a very specific process as laid out in the provincial Planning and Development Act/Ordinance and/or in the scheme. When this process has been completed and the public has had it opportunity to lodge comments (objections and representations) and municipal departments have commented, a decision has to be made on planning grounds as to whether the approval should be granted or otherwise. This would customarily involve the preparation of a suitable report prepared by or certified by a Professional Planner to place before either the Planning Committee of the Council, or if so delegated a committee of officials. The decision may subsequently need to be endorsed by the Municipality's Executive Committee (EXCO) or even the full Council, dependent on the terms of reference of the committees.

14. Appeals

Following a decision by the municipality on a (special) consent or rezoning application, the applicant and commentators are required to be advised in writing by the municipality and there is normally an appeal option avail for disgruntled applicants and objectors, with specific time frames involved, before a development may be commenced on the ground. The hearing of such appeal has traditionally been conducted by an expert body appointed by the provincial government. The final decision of the appeal body is binding on all parties; including the municipality. However the DFA ruling by the Constitutional Court has cast this traditional process into doubt, and in future it is likely that suitable bodies of independent external experts may have to be set up by municipalities to consider such appeals. This appointment may eventually be undertaken in concurrence with the provincial Minister of Cooperate Governance to ease constitutional concerns and so as to ensure impartiality. Note: The "in-house" Section 62 appeal process available in terms of the Municipal Systems Act, 2000 being confined to applicants and only when a matter is not considered by the full Council, is deemed as being unsatisfactory.

15. Building Plan Approvals

The building plan approval process in terms of the National Building Regulations and Standards Act No 103 of 1977 (NBR) and its regulations represents that last and final stage before the erection of a building approved in terms of the scheme zoning may take place. The NBRs provide for the buildings that meet health, safety, access (disability); and of recent eco- or "green" building standards such as natural ventilation, energy and water efficient buildings and material. It should be noted that it is not possible in terms of the Act for the municipality to impose land use conditions. The Provincial Planning and Development Act/Ordinance and/or the Scheme need to make such provision.

The National Heritage Resources Act No 11 of 1999, amongst other, requires that all buildings that are older than sixty years need the approval (permit) of the Heritage Council prior to either their demolition of a building or the approval by the municipality of building plans for their alteration.

CoJ v Gauteng Dev Tribunal - CCT 89/09 -2010

16. Township Layouts

As recognized in the Constitutional Court ruling above, the establishments of townships fall under the ambit of Municipal Planning. In order to exercise proper consideration and approval of township layout plans, certain norms and constraints have to be borne in mind by the municipality, including the following:-

a. **Standards for Erven**–The minimum site size of erven, their shape and dimensions and width of access strips etc. are normally to be found in the scheme controls, but could be contained in separate bylaws.
b. **Standards for Roads** – The standards required for roads and more specifically their hierarchy, gradients, width and minimum horizontal and vertical curves is normally found within the so-called Red Book (Guidelines for Human Settlement Planning and Design, CSIR, 2000)
c. **Geotechnical and Physical Constraints** – avoidance of areas subject to land slips, subsidence, heaving and oversteep (greater than 1:3)
d. **Environment Constraints** – avoidance of biodiversity sensitive and ecosystem goods and services providing areas.
e. **Flooding Constraints** - avoidance of 1:50 and 1: 100 year flood areas for commercial and residential areas respectively.
f. **Stormwater Management** – ensuring that the post development stormwater projection does not exceed the pre-development flow.
g. **Services** - ensuring that there is adequate provision for water, sewage, and electricity engineering services, refuse collection and ongoing environmental/ecosystem services, e.g. to prevent or minimize downstream flooding.

17. Traditional Areas

The so-called Traditional or tribal areas present a special challenge for municipalities. Particularly so in that the municipality is responsible for planning in these areas while the traditional leaders have continued to exercise control in parallel. Suffice to say that perhaps only the most significant developments should be required to seek planning approval, while traditional structures be permitted via a free entry non-building plan process. There is however a requirement to ensure that the most productive agricultural land is not consumed via "rural urban sprawl" and that environmentally sensitive land is protected and conserved.

18. Environmental Planning

In terms of the National Environmental Management Act (NEMA) and its suite of associated Acts such as the NEM: Biodiversity Act, NEM: Protected Areas Act, NEM: Coastal Management Act, etc. it is necessary that rare and endangered biodiversity be protected, sensitive coast lines be protected and that certain planning is carried out, e.g. the preparation of bioregional plans, coastal management plans, etc. While the environment function has been assigned in the Constitution as a joint responsibility of the national and provincial government, it has already been decided in case law by the Constitutional Court that the environment and planning are inextricably interlinked. One aspect may not be considered without the other. Furthermore neither the national or provincial government has the capacity or local knowledge to undertake the necessary level of detail to ensure that all the requirements of these Acts are met on the ground. It is therefore necessary and desirable that municipalities undertake environmental planning where they have adequate capacity and resources to act at a local level.

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This would range from undertaking a Strategic Environmental Assessment (with other role players), to preparing a systematic conservation plan for an environmental control overlay input into the scheme and the commenting on environmental aspects of development applications, particularly where there is no need for an environmental assessment in terms of the current NEMA regulations, which have generally progressively lowered the threshold for such assessments.

19. Agricultural Planning

As indicated above, there is a quandary where the Minister of Agriculture, via the Subdivision of Agricultural Land Act, 1970 may dictate land use or for that matter prevent the municipality from carrying out its constitutional mandate to prepare a wall-to-wall scheme over the full municipal area. This reluctance is understandable in that the Minister, with his department, is responsible for the overall food security of the country, and is perhaps understandably concerned that if he foregoes his veto, municipalities may embark upon unrestrained urban sprawl across fertile agricultural land. It is therefore essential, if the present conundrum is to be broken, that municipalities shed their perception of being purely "town" planning focused and undertake a meaningful level of agricultural planning in conjunction with the Department of Agriculture to gain their confidence. It is suggested that at the very least maps be prepared to guide planning where Soil Types, Crops, Forestation, Grazing and Conservation areas are all identified. This may then be incorporated within the IDP and/or SDPs and hopefully eventually into the scheme with suitable provisions to ensure that the most valuable of agriculture land may not be simply rezoned at a whim of developers, with the concurrence of the municipalities, for urban land use.

20. Transport Planning

Transport planning is undertaken in terms of the National Land Transport Act No. 5 of 2009 with a five year horizon. It is impossible to plan for land use without considering transport planning and vice versa. Lack of such integrated planning leads to either lack of access or congested roads and highways. The construction of a new major access road will conversely lead to pressure for development near the interchanges. Normally the transport planning would be undertaken by the engineering department of the municipality or a dedicated traffic department or authority. The Integrated Transport Plan should form an essential component of the IDP.

21. Housing Planning

Housing provision is undertaken in terms of the Housing Act No 107 of 1997 and the Social Housing Act of No 16 of 2008. The municipality, in conjunction with the provincial Department of Human Settlements, has an important role to fulfill in addressing historic backlogs and in planning for Charter housing located economically between RDP housing funded by the national government and the traditional bonded housing market. This activity would normally be undertaken by a specific municipal Housing Department or, failing the existence of such department, by the Planning Department. The upgrading of existing informal housing, in brown fields developments, should also be considered.

22. Integrated Coastal Management

Municipalities which flank the oceans are directly affected by the National Environmental Integrated Coastal Management Act No 24 of 2008. This Act requires that the Municipality promote the integration of coastal management concerns and objectives in its integrated development plan and spatial development framework and into other municipal plans, programmes and policies that affect the coastal environment.

The Act also makes provision for the establishment of a coastal planning scheme to facilitate the attainment of coastal management objectives as set out in the Act. A coastal planning scheme may be established and implemented for an area within the coastal zone by, amongst others, the Environmental Minister, the Environmental MEC and the municipality. A coastal planning scheme established by a municipality takes precedence over any other coastal planning scheme except one established by the Minister or the MEC, or established within a coastal protected area by the management authority for that protected area. A coastal planning scheme of a municipality may form part of any land use scheme adopted by the municipality.

The Act establishes, amongst other, a Coastal Protection Zone that extends inland 1 kilometre from the high water mark on properties zoned agriculture, undetermined or not zoned or within 100 metres of the high water mark of land zoned or used for other purposes. The Coastal Protection Zone is established to enable the use of land that plays a significant role in a coastal ecosystem to be managed, regulated or restricted.

23. The Roles and Responsibility of Councillors in Municipal Planning

a. As indicated in Figure 3 under item 10 above, the strategic planning which culminates in the integrated development plan (IDP) and the spatial development framework (SDF) involves a three way partnership between the councillors, the officials and the public. In the IDP and SDF approval process Councillors should in addition be guided by:-

   i. The municipality's obligations as set out in terms of Section 152 and 153 of the Constitution of SA.
   ii. The specific requirements of Chapter 5 of the Municipal Systems Act relating to IDPs and the SDFs.
   iii. Long term development strategy or vision for the municipality,
   Any previously approved IDP or SDF from which the current plans should not depart
   iv. radically without good reason.
   v. Input received from the all the communities consulted during the public consultation process undertaken throughout the municipality and irrespective of any sector's political persuasion.

b. Material considerations that should be taken into account by Councillors when making planning decisions on development applications include: -

   i. The zoning and permitted land use in terms of the scheme
   ii. Policy considerations at all levels, i.e. the IDP, the SDF, any subordinate plans and council policy on particular matters for instance on cell phone masts
   iii. Other than meeting relevant planning laws, any other legal requirements that are required to be met before a full approval to proceed may be made, e.g. an authorisation from the Department of Agriculture, a favourable record of decision (environmental authorisation) from the Department of Environment (provincial or national), etc.
   iv. Impact of the proposal on the environment – natural and otherwise – as assessed by the municipality
   v. Access to the site concerned and adequate road capacity in the surrounding roads.
   vi. Parking – adequacy or otherwise
   vii. Provision of infrastructure – Adequate sewage, water, electricity, etc. being present or a commitment to install same with the necessary funding being in place
   viii. Any necessary service agreements being in place and signed off.
   ix. The design and height issues given a particular context,

x. The density requirements being met
xi. Any specialist input
xii. Legitimate community concerns raised during the public process, and
xiii. Input received from other stake-holders, e.g. organs of state.

c. Issues that should NOT be taken into account by Councillors when making planning decisions on development applications include: -

i. The personal circumstances of the applicant
ii. Moral considerations when the law allows the sought activity
iii. Trade competition (trade objections)
iv. Political affiliation, and
v. Family, friend and/or business connection.
Note: If the applicant in fact falls into the latter category any councillor concerned should declare his interest and leave the meeting. Failure to do so could lead to invalidation of the decision if it is ever challenged in court.

In the event that the appropriate matters are not considered or that immaterial considerations are taken into account before arriving at a planning decision and/or the legal processes as laid down in the relevant legislation are not fully followed, there is a very real possibility of a decision being taken on judicial review and overturned. In cases of serious misdemeanour or where legitimate advice offered by officials on the process is not followed, it is not inconceivable that this could result in criminal prosecution.

24. Basic Institutional Arrangements to Execute Planning in Terms of Legislative Requirements.

The below diagram illustrates the basic necessary intuitional arrangement for the flow between the different Sectors, Departments, Councillors and the Public in preparing the IDP/SDF, the scheme and considering Land Development Applications. Sectors and Departments may vary in individual municipalities. Flows operate in both directions.

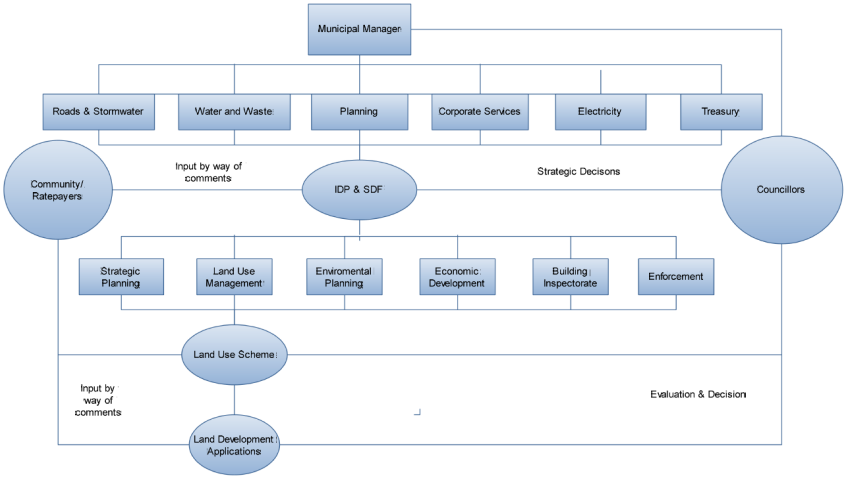

Figure 5 – Flow diagram of the basic Institutional Arrangement to Execute Planning in a Municipality

25. Challenges:

There are a number of challenges for the municipality that have to be addresses a best as possible. These include: -

Legalities of Planning

i. Separate Acts that impact on similar areas of compliance, have different time and conflicting decisions with respect to the local provincial planning Act/ Ordinance. These include the National Environmental Management Act, the Subdivision of Agricultural Land Act, NEM: Integrated Coastal Management Act
ii. Constitutional vagueness of Municipal Planning.
iii. Unevenness of planning application process (Less Formal Townships Act; the Development Facilitation Act - still operational is some areas of the country to a lesser or greater degree).
iv. Old and modernist approaches to planning that are unresponsive of need of current society and environmental challenges.
v. Influence and Politics in planning decisions.
vi. Litigation and time constraints on planning.
vii. Lack of skills to plan, implement and enforce.
viii. Poor alignment and support across spheres of government to rational and supportive planning in particular at a municipal level.

26. Conclusion

It is trusted that the above summary of the very varied ambit of the planning field sufficiently conveys an understanding and covers the important role that Councillors are required to fulfil within the planning process. A role ranging from the formulation and approval of the integrated development plan and the spatial development framework for the municipality, to adopting land use schemes enshrining individual property rights, to the judgement of development applications and thereby ultimately promoting sustainable development, balancing economic, social, and environment interests, ensuring inclusive development and the management of our unique natural resources.

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