

# **URBAN PLANNING**

A chronicle and reflections on  
Urban Land Use Planning Practice  
in South Africa

**L.J. OAKENFULL**

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A Chronicle and Reflections on Land Use Planning Practice  
in South Africa

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## FOREWORD

*This book, Urban Planning, is unique in many ways. It does not purport to be a contribution to academic literature and has not been crafted to fulfil a specific literary purpose. Its value lies in its clear and concise narrative – a poignant overview of what is commonly described as land use planning practice in South Africa, in its widest sense.*

*This book should take its rightful place on the shelf of any discerning planning practitioner who holds the profession in high regard and who seeks to attain continued professional development and improvement of the subject matter.*

*The author, Les Oakenfull has been and is a senior member of the South African planning profession and may justifiably be described as the proverbial alderman of the profession. His contributions to the profession both within the municipal sphere of government and as a long standing consultant, have brought about a keen knowledge and experience of the South African planning landscape. As may be expected of an alderman, he should mentor, advise, share experiences and foster a sense of belonging – Les Oakenfull has done this and more.*

*This book may be described as a memoir detailing the involvement of the author in the planning profession over a period of 51 years since his graduation from the University of Witwatersrand back in 1968. The definition of a memoir includes “an account of something noteworthy”. This is indeed what Urban Planning is.*

*No academic textbook or published article or piece of legislation alone can place a planning practitioner in a position to comprehensively grasp why we are where we are, how the South African planning system has evolved over time and how political and governmental shifts have informed our current reality.*

*Whether by intuition or by conscious design, Les Oakenfull has appropriately and timeously responded to the needs of a modern day planning practitioner – both in regard to self-education and simply intellectual curiosity.*

**Peter Dacomb,**

*Colleague, friend and Chairperson: SA Association of Consulting Professional Planners, North Region 2021*

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## **PREFACE**

It is now 25 years since the advent of democracy in South Africa which so fundamentally altered the political, social and economic landscape of the country. This dramatic change however, is hardly evident in the physical landscape of our towns and cities. This should not be surprising as the urban environment is an accumulation of generations of human settlement and building development which represent vast amounts of fixed capital investment. Buildings and urban infrastructure cannot easily and quickly be replaced to create new patterns of development. Change of the built environment is a relatively slow process.

Possibly because the effects of racial discrimination and apartheid policy were most visible in the distorted and dysfunctional land use patterns of towns and cities, urban development and its system of planning was the focus of attention at a very early stage of democratic government. A new approach to the planning and development of urban areas was seen as an urgent priority. At that time much had already been written and discussed regarding the inadequacies of and the need for changing the methods of urban planning. These commentaries however were mostly by political reformers and academics who identified problems and what needed to be changed. The call for a radical reform of urban planning still continues but there has been little, if any suggestion on how this is to be achieved. The operation of and practical measures needed to reform urban planning received scant consideration. Nevertheless, as early as 1995 new

national legislation was introduced as an initial interim measure to reform the methods of land use planning and development. This took the form of the Development Facilitation Act, 67 of 1995. ("DFA") but this did not noticeably alter the apartheid pattern of urban development.

Although a complete reform of the system of land use planning and development at the national level was considered an urgent necessity, nothing changed after the DFA for the next 18 years. Comprehensive new legislation was required and this was intended in the Spatial Planning and Land Use Management Act, 16 of 2013 ("SPLUMA"). In addition, there have been some new provincial and municipal laws on urban planning. To consider whether the new legislation provides for creating a more effective method of urban planning and the elimination of urban development problems and disadvantage, requires a review of both past and present practice. From this it can be considered to what extent any meaningful change or improvement to urban planning has taken place. This is the intention in these essays. How urban planning has been carried out in the past and how it is operated at present in the context of our socio-economic circumstances, government administration and the legal framework can illustrate how urban planning practice meets the needs of the new democracy. The intention and the expectation was that planning practice would be extensively changed in the new legislation which was recently introduced. That this would usher in a completely new system of urban planning with positive development results was the common understanding. In these reflections, the conclusion is that planning practice has hardly changed. In practice, the way in which planning operates continues very much as before. Reasons for this and some solutions are suggested.

This collection of essays is an accumulation of observations, events and experience over a period of 50 years in the professional practice of what is more commonly known as town planning. It relies on numerous articles and publications for background information but is not an attempt at any academic dissertation, planning theory or textbook on the subject. For this and other reasons, no review of or the usual reference to the literature on the subject is included. There is indeed very little written material and no more-recent

professional journals on the practical operation of our system of land use planning and its development. The topics are based mainly on experience of town planning practice in the province of Gauteng and in particular the City of Johannesburg. The process and administration of urban land use in the other provinces is very similar to that in Gauteng and, as the major city in the country, Johannesburg provides a large number and a variety of examples of how urban planning has operated and continues to operate.

The initial idea for these essays was triggered by a notable recent event in the process of town planning in the province of Gauteng. In the final months of 2017 the operation of the Gauteng Townships Board came to an end and its establishment was officially terminated in January 2018. For no less than five decades since 1965, the Townships Board played a significant role in the operation of town planning in Gauteng and in other areas which were previously part of the erstwhile Transvaal province. Because of its function in the land use decision-making process, the Board was a centre of debate on numerous land development proposals, many of which were vigorously disputed. The situation in the other provinces was little different. In this process, planning practice and the implementation of land development were made real and provide some of the material for discussion.

The discontinuation of the Townships Board however was not an isolated event. It was a result of a much more fundamental change to the idea of how land use planning in urban areas should operate. That change originates in the Constitution which introduced the notion of *municipal planning*. This completely new approach to the way in which urban areas are to be planned and administered was the basis on which SPLUMA was introduced. It was intended that this national legislation would not only totally reform the urban landscape but also create an entirely different and improved planning system and procedure for urban development. Whether this has happened in the past eight years since 2013 with the introduction of SPLUMA is the question to be considered. The background and some history of urban planning in South Africa is discussed and observations on how the system now operates provides a perspective on how and if the method of urban planning has changed. To what

extent has the planning of our towns and cities become more positive and productive is the question of these essays. Other than the introduction of a few more up-to-date urban development policies and minor changes to planning administration, the system of urban planning is no different than before. If anything it is more inefficient and no more effective in improving the quality of the urban environment. The new urban planning era of SPLUMA has not changed planning practice for the better.

These writings are largely personal perspectives and include opinions that are quite widely shared. They may be of interest, not only to town planners but also to others involved in urban development. The purpose is not simply to be critical but to question whether aspects of town planning practice are appropriate to the urban development needs of today. Some of the content and detail in these essays may be considered superficial or not entirely accurate: they are however, concerns which need serious attention.

## EXPLANATORY NOTES

The development of towns and cities involves numerous elements and activities which are not always commonly understood or which make use of terms which have different interpretations. It is therefore useful to clarify the intended meaning of various topics in the discussions which follow.

In Britain the initial title to describe the activity of formulating plans for the improvement and future development of towns and cities was *town planning*. Its focus was on urban areas although later the subject became *town and country planning*. The concern of this town planning was primarily with determining the physical characteristics of towns and cities which meant mainly the layout pattern of the urban area and the arrangement of its various land uses. In the United States of America there was a somewhat greater emphasis on civic or urban design and the creation of land use zones. There, the term *city planning* and also *urban planning* was used.

In South Africa the term town planning was adopted but which, for many years, has only been concerned with urban land use control. Later, the subject was expanded to include regional and even national planning and it was then considered more accurate to refer to physical planning and later spatial planning. There was subsequently added the term development planning which was never clearly defined.

All these different terms do not adequately reflect the purposeful activity of managing land use and determining future urban development. The use of the term *Urban Planning* is for two reasons. It is firstly to confine the discussion to the development of urban areas and leave aside regional, rural, agricultural and

nature areas as quite distinct development issues. Secondly, it is to avoid the limited idea of town planning being simply the regulation or control of land use as in the past. In the present context, the title Urban Planning includes the land division pattern of urban settlement, the provision of engineering and social infrastructure; the management of land use and the regulation of its development; and importantly, the preparation of spatial plans and strategies for future urban growth and change.

In any modern non-communist economy, urban development mostly involves the organisation of private land use and the provision of related urban services. These services or utilities are almost invariably supplied directly or indirectly by government. This necessitates that government has some control over land use if only for proper development coordination. In most countries planning goes further – it aims to optimize development in the public interest and for reasons of general social and economic welfare. This cannot be achieved in an unregulated free market economy. To this extent urban planning is a necessary form of government intervention which means the regulation of land use.

Government regulation can only be achieved by rules and prescriptions and therefore, legislation is necessary. This is no less the case in urban planning and it is the reason why these essays so frequently and extensively refer to planning laws and related land development matters. Planning laws not only determine what may or may not be done in the use and development of land but also establish the process by which it takes place. This is here referred to as the “planning system”. This system is the context and framework in which urban planning and development is intended to function. How the system operates in practice is another matter which requires skills, interpretation and innovation. A motor car can be designed with the most advanced specifications but its practical operation is dependant on its driver. So too, effective urban planning is dependant on the practising planner.

There is frequent reference to *planning policy* or *development policy*. In planning practice two meanings have been attached to these words. The general meaning is a plan of action or an intended means of achieving an objective. In

planning administration, government officials and politicians have tended to use the term to mean a rigid and prescriptive set of land development regulations. These conflicting views are later discussed at greater length. The approach adopted here is that in planning, policy can only operate as a guideline and a general frame of reference for development decisions.

For the non-technical reader some definition of the terms used in these writings is included in Appendix 1.

# 1

## ORIGINS

### *Stage One*

It is generally considered that modern town planning had its origins in Britain and arose from the very rapid growth of towns and cities during and following the industrial revolution. By the latter half of the 19<sup>th</sup> century, factories powered by coal had proliferated in the major urban areas, rural populations had migrated in large numbers to urban centres, poor quality housing had been built for the working classes and an extensive network of steam powered railways had been established. This resulted in unsanitary conditions and disease, pollution and appalling living circumstances of the poorer classes. In response, government introduced legislation on public health and housing as a measure to improve the living conditions of the working classes. The significance of this lies in the understanding that public health and the elimination of social evils in the urban environment are matters of public concern. Undesirable living conditions not only affect the poor and disadvantaged but also pose a threat to the wellbeing of the whole of society. For this reason, government action was not only necessary but also was well justified. At about this time some enlightened industrialists, possibly influenced by social reformers of that era, established new towns or housing estates for their workers. These were designed and built to create attractive housing in healthy surroundings and to include social facilities such as parks, schools and community centres. The people most remembered for these efforts were the Quaker families such as the Cadburys, Levers, Carrs and others. These initiatives were clearly measures of general social and economic welfare and not simply motivated by charity and benevolence. It had become understood and accepted that adequate living conditions in a healthy urban environment are an economic benefit in the interests of society as a whole. From this developed a wider interest in urban development which acquired the new title of *town planning* and early in the 20<sup>th</sup> century the *Housing, Town Planning,*

*etc.* Act of 1909 was introduced. The central foundation of this town planning was the objective of a healthier, more efficient and productive urban development. It involved the participation of engineers, land surveyors, architects and lawyers and from this arose the discipline of town planning and the creation of the town planning profession. This gave town planning a base in technology – the engineering of infrastructure services, the layout of urban areas and the design of the built environment together with an administrative basis in law. Town planning in practice was primarily concerned with the physical environment of land use, civic design and urban infrastructure more with the aim of efficient and attractive development. To this extent, town planning was confined to matters of the physical urban environment. While this was seen as contributing to general welfare, town planning did not deal directly with the social welfare issues of housing, health, employment and education. Later in Britain, with the results of two world wars, the concern with town planning matters was increased since, especially after World War II, large areas of cities had been destroyed and great numbers of houses had been lost. The rebuilding of urban areas became a necessity together with the priorities of providing housing and employment for those most in need.

Because of its colonial history and close ties to Britain, South Africa had at an early stage, adopted the idea of town planning. However, the idea was not put into effect for some time. Conditions in this country were very different. Here, the main purpose of town planning was not so much a matter of social welfare but the control of land use. The aims of town planning with concerns for the poor and disadvantaged had far less application in this country. These communities were mostly separate from the White population group and, without any franchise, their needs could conveniently be ignored.

Prior to the Union of South Africa in 1910, the two imperial colonies of the Cape and Natal and the two Afrikaner republics of the Transvaal and Orange Free State had legislation for township establishment to ensure the orderly location and layout of towns and, to a limited extent, for sanitation to maintain rather than improve public health. So, town planning did not have the purposes of social improvement as in Britain. Early urban planning was limited to the single purpose

of regulating the location of urban settlement and its subdivision into streets and erven. This continued after 1910 and the simple system of town planning locally was not affected by the experience in Britain. Circumstances in South Africa were quite different as here industrialization had hardly started: there were no concentrations of factories and cities were comparatively small. Little urban planning intervention was considered necessary.

In the creation of the Union the provinces were given four governmental responsibilities. These were education (schools), health (hospitals), provincial roads and local government. The very limited urban planning function of township establishment continued unchanged and, as simply an aspect of local government, was therefore controlled by the provinces. In the following decade as the recently established country settled into its new system of government administration, the development of urban areas received more attention. Despite the interruption of World War I, socio-economic circumstances were changing and municipalities became more aware of issues to be dealt with in the urban environment. Perhaps most notable was the emergence of slums which, in one account of Johannesburg was, to a considerable extent, the result of the "Poor White" problem. It was also a result of the overcrowding of poorly paid Black workers. This was recognised as a housing problem but the real concern was the threat to public health. With the subjects of slums, public health and housing now in focus, the British idea of town planning gained some currency.

For the first two decades after 1910 there was no legislation or any administrative structure to introduce the new idea of town planning locally. From reports at the time, the slums in Johannesburg were multi-racial and this was seen to be the root of the urban problem. What subsequently resulted by about 1930 was the removal of Blacks from the inner city while almost nothing was done to provide housing for the White community who suffered poor living conditions. This can possibly be explained by the relatively small scale of slum areas. It is recorded that a survey of the White community by the Johannesburg City Council in 1933 showed 157 cases of overcrowding in single rooms and 873 cases of unrelated adult males and females sharing the same sleeping quarters.

These numbers are relatively insignificant compared to the thousands of Blacks, who were moved out of the established urban areas.

The planning of land use in a broad sense was overshadowed by the issues of slums, public health, and multiracial housing areas – and what the City Council of Johannesburg in 1929 referred to as the “native menace”. However, the seed of the idea of town planning as being the regulation and management of land use had been sown. With pressure from various quarters, the power to exercise land use regulation in addition to township establishment was conferred on the provinces in 1925. This led to Stage Two in the origins of urban planning in South Africa

### *Stage Two*

Despite the economic depressions of the 1920s and 1930s and the disruption of World War I, the economy had entered the early stages of industrialisation. The towns and cities of the Witwatersrand had become centres of manufacturing and business with more extensive suburban residential areas. Urban development became a more complex matter and, following the inclusion of town planning as a provincial function in 1925, the Transvaal in 1931 introduced the first provincial ordinance to add land use regulation to township establishment as the second element of urban planning. The 1931 Transvaal ordinance was followed by similar ordinances in the other three provinces. In numerous commentaries it is stated that this legislation was mainly influenced by British town planning which had been further developed by a new Act in 1919. This is generally true as the knowledge and experience locally, although limited, had mostly British origins. However, the resultant planning system here was considerably different.

In the new provincial ordinances, land use regulation as the second element of urban planning, was provided for by the creation of town planning schemes. A town planning scheme is a system of statutory land use zoning and is a legal

instrument like a municipal by-law which establishes the purpose for which and how each portion of land may be used and for which it may not be used. By establishing land use zones and categories of land use, a scheme determines what development is legally permitted or prohibited on privately owned property (and elsewhere). This is well understood and significantly, it is an accepted principle that this zoning creates legal rights in land. This has implications for urban planning practice.

Zoning must be viewed in the context of the legal system in which it operates. The method of land use zoning in a town planning scheme in South Africa is far more akin to that of the zoning ordinances of the United States of America. Its first comprehensive zoning ordinance was adopted by New York City in 1916. Ten years later enactments by various state legislatures had given municipalities the power to zone their urban areas. A number of authors have stated that our method of zoning was based on this American approach although the concept of zoning is said to have originated in Germany.

The legal system in the United States is based on the rights of freedom of the individual and the private unrestricted ownership of land in a free market context. Restrictions, for example on land use, are justified only by the benefit to and in the interests of the individual or the people – not of the state. In the USA this kind of regulation is referred to as the “police power”. The right of government to intervene in the private use of land by the method of zoning was tested at an early stage in the American courts and the case most often quoted is the *Village of Euclid v Amber Realty Company* in 1926. This confirmed that the legitimate purpose of zoning was to create amenity and harmonious land use for the benefit of the community. Although slums and poor housing conditions were a feature of American cities in the early 20<sup>th</sup> century, the response of introducing urban planning was more related to the aims of avoiding nuisance in the public interest rather than improving the conditions of the poor. This was to be achieved by zoning which separated different land uses into strict single purpose zones to preserve public amenity.

In Britain, the origins of English law came from the historic principle that the monarch held supreme power. All land belonged to the King (or Queen) who granted estates to the aristocracy and to the Church which remained within the King's realm and usually, subject to royal taxation. The underlying principle was that nuisance was not so much a public interference but a disturbance of the "king's peace". The right to develop one's land is limited to no more than its existing use. To change the land use requires planning permission and there are no zoning rights. The South African legal heritage is largely Roman-Dutch law which has characteristics of personal rights and land ownership more like that of the United States than Britain. This can explain why our town planning scheme zoning is more of an American method of land use regulation than it is a British system of urban planning.

After the introduction of the 1931 Transvaal ordinance, municipalities somewhat slowly, prepared town planning schemes during the 1930s but, with the intervention of World War II, the first town planning scheme only came into being in 1946. It has been noted that the preparation of town planning schemes was slow and difficult because of the local lack of knowledge and experience in this town planning mechanism. A shortage of skills in urban planning has also been frequently stated since 1995 as a continued obstacle to current land use reform.

When town planning schemes were prepared, the land use zoning was to a great extent simply based on the development which already existed or on whatever land use was allowed or not excluded in the title conditions of each property. This included both erven in townships and on Farm portions. The result was that the zoning map of the town planning scheme simply formalised the *status quo* of existing land use or development rights. It did not indicate any proposed future land use. Within the municipal area of town planning schemes at the time, there were large numbers of township erven and extensive areas of land which were vacant and still to be developed. Because the town planning scheme zoning provided so much potential for further land use growth it came to be regarded as a plan for the future. On this false assumption little need was seen to prepare development plans for the future. Experience of working in municipal government in the 1970s revealed that, even then, municipal and provincial

planning officials held the belief that zoning need not and should only be amended in exceptional circumstances. There was also and often still is, a public attitude that zoning should be permanent.

There is another British legacy which has had an important bearing on the urban planning system. Under colonial rule, ultimate power and authority rested with the parliament in England. Colonial government powers were largely in the hands of the Governor General who was the king's or queen's appointed representative for the purposes of government administration. The Governor General was not locally elected but exercised considerable unilateral power. When the provinces were created in the Union of South Africa elements of this political structure were retained. The provinces were headed by an Administrator whose functions were quite similar to those of a Governor General. The Administrator had a powerful influence over town planning matters as municipal administration was regulated by provincial ordinances. The Administrator had extensive decision making control over municipal affairs as a reference to the Transvaal Local Government Ordinance of 1939 will demonstrate quite clearly.

The relevance of this political structure under which town planning operated lies in the way in which the purpose of urban planning was understood at that time. The understanding was shaped by social attitudes, economic circumstances and the legal framework in which urban development took place. It needs no reminder that this all related only to the White population group. Urban settlement of other race groups was a central government matter and based on the notion that these communities should not have a place in towns and cities except only as was necessary in the economic interests of the White population. All of this has now changed fundamentally which results in a radically different understanding of the purpose of urban planning. However, until very recently the almost dictatorial position of the provincial government in urban planning matters remained unchanged. While this had some degree of acceptance, there began to grow an increasing dissatisfaction with the system of town planning in the hands of the province and this had an effect on the evolution of the planning system which followed.

After World War II and for the next 20 years, South African cities consisted of a single central business area – the CBD<sup>1</sup>, well defined industrial areas and surrounding residential suburbs. In the suburbs there were small local shopping centres but nothing more; other than schools, churches and local community facilities. The process of industrialization was still underway and did not yet put much pressure on land use change. The conventional wisdom was that any growth in economic activity was already provided for in the town planning scheme which was seen as the plan for future land use. The only “planning” that was necessary was for the creation of new residential areas to accommodate population growth and for land use control. This was taken care of by the process of township establishment and by zoning which were strictly determined by provincial government. By the 1960’s the process of industrialization had become more mature and, as the major city in the country, Johannesburg was becoming a financial and commercial metropolitan area of tertiary economic activity. With this was increased population growth and the spread of residential suburbs. New elements were entering the urban planning arena and new forms of land development were emerging. For this, the planning system was ill-prepared.

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<sup>1</sup> CBD: Central Business District

## 2

### EVOLUTION

#### *Phase One*

After the earlier legislation on township establishment, the introduction of town planning schemes was the second stage in the evolution of the system of town planning but, for the next 25 years, this had little impact on planning practice. There were numerous established townships which had a plentiful supply of undeveloped erven to provide for housing as the White population increased and adequate undeveloped or underdeveloped properties zoned for business, industrial and commercial purposes. Land use growth which required a change of zoning was a rare exception. In the 20 years between 1946 and 1966 the Johannesburg Town Planning Scheme was amended by the rezoning of properties about 250 times – on average only 12 or 13 land use zoning changes annually. This was even so when the economy had recovered from World War II and new features of urban development were starting to appear. Suburban residential development was beginning to accelerate and private motor car ownership was increasing considerably.

The more rapid urban growth from about 1960 onwards and the financial pressure on municipalities to provide infrastructure services for this expansion made the town planning system even less adequate and, as a result, new legislation was introduced. In the Transvaal this was in the *Town Planning and Townships Ordinance, 25 of 1965*. Interestingly, the same year saw the establishment of the first degree course in town planning in the country at the University of Witwatersand. The two basic elements of urban planning - township establishment and town planning schemes were retained, but a radical new provision was introduced. This new provision was the concept called *betterment* which had a history in British town planning. It is a levy or fee paid to government

on the improvement to property which increases its value. The term betterment is often referred to as, and confused with, an enhancement levy or development contribution which was a later innovation. In South Africa this “betterment” levy was to provide municipalities with additional finance for engineering infrastructure.

The first reference to betterment is found in England as far back as the year 1427. This was a levy by the community or government on land owners who benefited from some public works such as the drainage of a swamp or the erection of flood barriers. The principle was simple. The public works either protected or improved the value of land and therefore, the land owners who benefited paid for the cost of the works. Land owners who did not benefit were not required to pay so that only those who gained an advantage paid for the enhancement of their land value. Over the years this principle was varied and distorted but it was always a locally applied measure.

Under a more socialist government regime in Britain, radical new town planning legislation was introduced in the *Town and Country Planning Act* of 1947. This was intended to address the redevelopment needs of the post war era and included a levy on the increase in land value of all property as a result of planning permission for development when granted by the municipality. The motivation for this betterment levy was that the increase in land value was not earned or created by the land owner – it was a result either of state action or the economic growth of the community. Therefore, it was reasoned, a land value increase resulting from new land use development should belong to the public or the state. It is important to note that this levy was not related to the concept of betterment in its original sense – those who paid the levy did not receive any direct or even indirect benefit.

This so-called betterment levy in 1947 was set at 100% of the land value increase. In this sense land development rights were nationalized and in effect, betterment was a 100% capital gains tax on land. The concept was strenuously opposed as an unjustified interference in the land market and that it would seriously frustrate land development hardly needs any explanation. In 1953 the

betterment provisions were abolished as unworkable but in 1967 betterment was re-introduced at a rate of 40% . This was then rescinded in the early 1970s only to be replaced in 1976 by a Development Land Tax of 80% of the land value increase. This too was subsequently abolished in 1986.

Against this background and the British influence on town planning ideas locally, the 1965 Transvaal planning Ordinance included a provision for the payment of “betterment” on the increased value of land as a result of its rezoning. The betterment levy was set at a rate of 50% of the value increase. The Ordinance proved to have many inadequacies for the calculation and recovery of this levy so that the provisions of the Ordinance had to be amended on several occasions. Also, the impact of this tax on land development was a controversial issue and the levy was later adjusted to 30% of the land value increase. This continued until 1986 when the next stage of the town planning system was reached.

In the 1970s urban development continued at a fairly rapid rate as was particularly evident in Johannesburg. New high-rise office buildings were being constructed in the city centre, new residential suburbs were extending the urban edge and shops were starting to decentralize from the city centre. The city was entering the modern era and the mono-centric urban pattern was beginning to fragment. There were other factors which had an impact on the system of town planning. The growing pressure for new suburban areas was accompanied by increasing rates of inflation and rising mortgage bond rates – housing was becoming more expensive. Allied to this, major residential township development companies were buying up large tracts of land which were held for longer term release onto the market. This was seen as restricting the supply of residential land and affecting property prices. The land development companies however argued that this was necessary as the administrative process of establishing a township through the provincial bureaucracy took 4 to 5 years. It was becoming increasingly difficult for the average White citizen to afford housing and this created political concerns. It was the convention at that time that the only appropriate form of family housing was a single detached dwelling house on an erf of reasonably generous proportions. It seems incredible today that in those years the provincial administration applied a policy that the size of

residential erven should not be less than 1000 square metres. As provincial government had such control of town planning and township establishment, this policy dictated the low density of new residential townships of that era. This did have some general support. Social attitudes then were that the size of a residential property was directly related to development quality and amenity. A residential erf of less than 1000 square metres in area was considered to be below acceptable standards. The pressures to provide more land for residential development also prompted applications to subdivide existing large residential erven in established low density suburbs. This was met with strong resistance by municipalities and in particular, subdivision which involved the creation of panhandle erven was seen as some sort of heresy.

At the same time, central government reluctantly realized that the development of urban residential areas for non-white communities was necessary to provide labour essential to the economy of towns and cities. This created the “townships” such as Soweto on the outskirts of Johannesburg. These were developed by national government and resulted in the apartheid cities that still exist today.

Circumstances had now begun to change radically. What was seen to be a crisis in the availability and affordability of residential land and housing led to a number of government commissions of enquiry into matters such as the cost of residential land, the role of financial institutions in financing housing and the financing of housing for the Black urban community. These were variously the Niemand, Fouché, Brown and Viljoën Commissions but none of which had any effective results. Consequently, in 1982, there was the *“Commission of Inquiry into Township Establishment and Related Matters”* which became known as the Venter Commission. This inquiry was more broadly based and its terms of reference allowed for a more expansive investigation into the issues concerned. The reports of this commission produced results and soon, at least in the Transvaal, led to significant changes in the planning system with the enactment of the *Town Planning and Townships Ordinance, 15 of 1986*. But it only dealt with White urban areas.

In the preceding decade growing dissatisfaction had been voiced against the principle that town planning decisions were made by the province contrary to the wishes of the municipality and without accountability to local citizens. Moreover, to those involved in urban planning, there was a quite distinct attitude by the provincial administration that it knew better what was good planning for municipalities while those in municipal government thought they were far more knowledgeable about planning for their own urban areas. In the many issues dealt with by the Venter Commission it was often argued that the long delay in the township establishment process was an important factor in the high selling price of residential land. The delay effects of interest on capital investment was said to substantially increase the costs of residential land production.

Another issue of contention was the question of endowment contributions paid by developers. On township approval, the system was that when a residential township was established, the township developer was required to provide land for parks, schools, refuse disposal sites, and other public facilities. The basis for this was the logic that a new residential township created a new community and that the new community generated the need for schools, refuse removal and other community services. In many cases, providing such sites in the township layout was not practical. Where this occurred, the township developer was required to pay a cash endowment to the municipality for such services which were then provided elsewhere. In the case of schools a cash endowment was paid to the provincial authority as it was responsible for state education. In each case, the amount of the contribution was calculated by a set formula in relation to the number of potential dwelling units in the township. The same situation applied to the provision of parks or open space. In most townships of reasonable size, parks were provided in the approved township plan but in smaller townships the resultant park area would be too small to be useful and practical. In such cases an endowment payment was required in lieu of providing the park area. It was argued to the Commission that endowment payments were a financial burden which increased the cost and therefore, the selling price of land.

A special case of endowment related to industrial townships. These developers were required to pay a percentage of the value of the township land for the purpose of providing housing for Black workers. The logic of this was that new industry generated the need for labour. White employees could take care of their own housing needs but Black workers, generally the most lowly paid, could not do so. In any case, Blacks could not own land and the housing for these workers in urban areas was provided by central government. It seems never have to have been considered that in the tertiary economy of a city like Johannesburg there were now more Black workers in business, commerce, retail trade and in service activities than in industrial employment. It is recorded that as early as 1946 there were more Blacks than Whites in the metropolitan area of Johannesburg. The endowment levy for Black housing was missing the target.

Among the many technical and administrative matters of township development considered by the Commission was one aspect repeatedly mentioned. This was the need for a means of planning ahead for future development. The land development industry called for long-term planning to remove the uncertainties of township development in order to speed up the approval process. Municipalities supported the idea as a means of determining in advance the services infrastructure which would be required for the growing urban area. One of their complaints was that the arbitrary approval of townships by the province made the planning, provision and financing of roads, water, sewerage and electricity in an organized fashion extremely difficult. No one could argue against this very obvious purpose of town planning.

Already by the 1970s the Johannesburg municipality had created a new division of its town planning department for this purpose which was known by the rather inept title of *forward planning*. Any advance planning which the City had undertaken during that time however, had been almost entirely sterile. There was no formalized system that recognised these plans or gave them any status in the planning process. There was no certainty that the provincial planning authority would respect such plans when considering the approval of land development applications. But, at the time of the Venter Commission, there was an unstated belief in municipal thinking that if a system of planning for the future

were established, the plans could only be produced by the municipalities themselves and this would wrest some control from the province. Generally, it was almost certainly understood that the scale of urban growth and change could no longer be managed by the province alone.

During this evolutionary period of urban planning a notable new dimension was added in 1967. This was the proclamation by central government of the Physical Planning Act, 88 of 1967. Although it was national legislation and purported to be concerned with “coordinated environment planning and the utilisation of the Republic’s resources”, its effect was nothing more than a national government interference in the development of urban areas. The Act is very short and included four basic measures all of which related only to the regulation of land use. The Act’s purposes were:

- To control the zoning and subdivision of land for industrial use
- To reserve land for specified purposes
- To create controlled areas; and
- To establish Guide Plans

The first three purposes can be traced back directly to the racial policies of the apartheid regime to limit the presence of non-White community groups in urban areas, reinforcing the Group Areas Act and promoting decentralized “border” industry. The fourth purpose of the Guide Plan was simply a form of zoning map to be overlaid on municipal town planning schemes.

The detail of procedure in the Act is extremely limited and it is remarkable the extent to which the powers in the Act were exclusively in the hands of cabinet ministers and senior government officials. Their primary activity was to place restrictions on land use in accordance with apartheid objectives. The Guide Plan, usually prepared for a metropolitan or regional urban area, was just a map identifying very basic land use zones. In 1987 an extensive review of the Guide Plan system concluded that this mechanism could not be seen as planning in any positive sense. All it did was to reinforce racial discrimination and “separate development”. It was nothing more than a form of zoning and not a plan for future development.

## *Phase Two*

The major change in the planning system recommended by the Venter Commission was that the control of land development should be by municipalities which would be given the decision making responsibility for township and zoning approvals. Within a short time, a new Town Planning and Townships Ordinance in 1986 was enacted in the Transvaal. While it appeared to usher in a new era in urban planning this was not entirely the case. Municipalities would only be given responsibility for their own town planning affairs if the Administrator declared them to be *authorised local authorities*. The principle was that only when a municipality had prepared a comprehensive strategic development or land use structure plan as it became known, would it given “authorised” status. And through this process of course, the structure plan would need to be accepted or approved by the Administrator. Whether this was a responsible means of providing a transition of authority to municipalities or more of an attempt to retain a degree of provincial control is difficult to say.

What followed was not entirely as intended. Municipalities did not produce the envisaged structure plans or none were submitted to and accepted by the provincial authority. In part, this was because there was no common and clear understanding of the form and content of the required plan. Planning for future land development was new and unknown territory and it was also the situation that in most cases the municipalities had insufficient skills and qualified staff to deal with the task. It very soon became evident that this new system of urban planning would not easily get underway. But the pressure to allow municipalities to take charge of their own town planning affairs was too great and the Administrator then declared all municipalities to be authorised local authorities and the change was completed. The change however, was not all that had been hoped for.

Although municipal councils now administered and decided township and rezoning applications, all these decisions were subject to an appeal to the provincial Administrator. Where an appeal was lodged against an unfavourable

decision, either by the land development applicant or a dissatisfied objector the case was heard and considered by the provincial Townships Board which then made a recommendation to the Administrator. There were also some matters on which the Townships Board itself made the approval or refusal decision. In this way municipalities were far from totally independent and the position of the province in deciding town planning matters remained substantial.

The other notable change resulting from the recommendations of the Venter Commission was that the 1986 Transvaal ordinance abolished betterment and all forms of endowment payments with the exception of those for parks and open space. The thinking of the Commission was that the endowment payments unnecessarily added to the costs of producing township land and the purposes for which they were intended should be financed from other more general sources of revenue. The provision of parks in a residential area however is regarded as a necessity so this requirement was retained. Where parks could not be practically provided, an endowment payment was required and the ordinance included a formula for the calculation of the amount to be paid. This formula was based on the number of potential dwelling units in the township and is somewhat peculiar. The park space required for each single dwelling house was 22 square metres but for higher density apartments and similar dwellings the park area was 18 square metres per dwelling unit. It can be argued that ordinary dwelling houses with large gardens have less need for parks than high density apartments without their own open space. Is it not therefore logical that high density development need provide more park area for each dwelling unit?

Although betterment and endowment payments were abolished, the recommendations by the Venter commission regarding the provision of urban infrastructure services was adopted. This was that the services reticulation within the development area or "internal services" should be provided by the land developer. This was seen to be an integral part of the land subdivision of townships. Logically, the production of erven for whatever purposes could only be complete if it included the provision of these essential services. The provision or extension of existing main or bulk services to the new township was the responsibility of the municipality. These are known as "external services". This

involves costs to the municipal fiscus. Since it was reasoned that such costs should not unfairly be financed by existing ratepayers, the costs should be borne by the township developer. On this basis the new Transvaal Ordinance of 1986 provided for development contributions for external services to be paid to the municipality by the land developer. This also included service contributions on rezoning where existing services needed to be increased and improved to serve the change of land use.

The payment by land developers of the contributions for external services as a result of rezoning however has not generally worked as intended. The funds collected by the municipality are not set aside in a separate account dedicated to providing for the need for additional services. They are not ringfenced but disappear into the municipality's general revenue. As a result, very often the improvement to the external services does not take place. This is most notable in the case of roads and in the provision of parks or open space. It is a problem which continues even today when the planning system has supposedly been reformed as is discussed later.

Brief reference has been made to the rapidly changing landscape of urban land use in the 1960s and 1970s but during this period there were additional new factors of city growth which had an impact on town planning practice. The first of these related to urban expansion. The metropolitan urban area of Johannesburg by about 1965 had spread beyond the borders of the municipal boundary. This was urban sprawl at a relatively rampant rate and was most evident north of Johannesburg towards Pretoria. In those days, peripheral urban areas were part of and administered by the Peri-Urban Areas Health Board, a provincial quasi-municipal body which managed the affairs, including town planning, of localized settlements which were too small for the establishment of a town council.

The continued sprawl of low density suburban areas around Johannesburg was becoming too large to manage by the province and required municipal political representation. After a commission of enquiry, the province established two new municipalities in 1968 – Sandton and Randburg which covered the northern

residential areas of the metropolitan city. At the same time, a large mostly undeveloped area to the south was added to the municipal area of Johannesburg. Sandton and Randburg were dormitory areas of metropolitan Johannesburg and in every way were a functional part of the city. These were purely residential suburbs without business or industrial land of any consequence and, as a result, had a rather meagre financial base in municipal assessment rates. Whether the decision to create two new municipalities instead of just extending the municipal area of Johannesburg had any political motives is a subject for debate. The governing party in Johannesburg had for long been the opposition to the national government party which held the province. Some speculation was that Johannesburg as a city was becoming economically and financially bigger than the province and possibly the provincial government did not like the prospect. The relevance of this history is in subsequent planning events which are discussed later.

The other major aspect of urban development of this era related to roads and in two particular ways. The first was the construction of freeways, initially the M1 and M2 urban freeways in Johannesburg and followed by the N1 national freeway between Johannesburg and Pretoria. These freeways and those in other major cities had been in the planning for several years and their appearance in the first half of the 1970s confirmed that South African cities were now more like those elsewhere in the western world, most particularly North America, but with one glaring difference. That difference was obviously the racial separation in urban areas under apartheid.

The M1 and M2 were urban freeways which, to a large extent, were designed to connect the suburban residential areas with the city centre. By far the greatest, if not almost total concentration of non-industrial employment was in the city centre. Getting commuters from the suburbs to the CBD was becoming ever more difficult. The conventional view in town planning circles was that the city centre would simply continue to be the dominant business and employment centre in the future. As the White communities had reached high levels of private car ownership and the use and provision of public transport was declining,

freeways seemed the only answer, at least to traffic engineers who were nurtured on North American practice.

In Johannesburg, the construction of the urban freeways created a paradox. The city centre, where all the private car commuters were destined, was an area of narrow streets and tiny erven in small street blocks inherited from its origins as a mining camp. Once in the city centre, motorists were faced with a severe shortage of parking space and the municipality and its traffic engineers then constructed large public parking garages. The parking garages were mainly for long-term use by commuters working in the city centre and to ensure the sustained viability of business activity. In doing this however, it encouraged more private car instead of public transport use. The result was increased traffic congestion and an even lower demand for the city's bus service. So it can be said that the solution to city centre accessibility aggravated the very problem it was attempting to solve.

Traffic and transport became the all important subject of urban planning and resulted in the second aspect related to roads. Following the North American example, both the municipality and the province embarked on the planning of extensive networks of freeways. The provincial roads department planned a grid of freeways and major arterial roads covering the whole of the Pretoria-Witwatersrand-Vereeniging (PWV) region which is now the province of Gauteng. In similar fashion, Johannesburg produced a plan of urban freeways and new arterial roads. Both sets of plans aimed to provide for land use development in the very long term and, the engineers proclaimed, would support a wide range of possible future land use development patterns. We will come to the fate of these road plans in due course but they reveal a particular attitude to urban planning at that time. The new dogma was that land use and transport planning must be integrated – both aspects of urban development planning should be done together. This is no more than a statement of the obvious but in practice has been less respected.

It can be said that the new ordinance of 1986 was a significant improvement to the practice of urban planning in its more detailed aspects of development

procedure and in the devolution of the urban planning process to municipalities. The more fundamental objective of establishing a system of planning for future development, the third element of urban planning, failed. The idea of creating strategic development or land use structure plans never materialized. It can also be said that the devolution of planning functions to municipalities was more superficial than substantial which leads to a later discussion on the role of the Townships Board.

### 3

## TRANSITION

Until 1995, urban planning as a comprehensive and integrated activity was not the subject of attention at national government level. There were of course particular matters of national government legislation and policy which had significant effects on urban development. This was most notably the Group Areas Act as well as Acts on urban transport, industrial decentralization to border areas and other national policies. While most of these failed and were abolished under democratic government, they were apartheid measures separate from the system of urban planning. For as long as the provinces kept control of the development of towns and cities no need was seen for any nationally uniform practice of urban planning.

In general, urban planning was of minor importance. All this changed in 1995 when separate and discriminatory systems of land development became totally heretical. The circumstances of urban development become a national matter of primary concern and resulted in the enactment of the Development Facilitation Act (DFA). This legislation provided a new and alternative process for urban planning. It did not supersede provincial planning ordinances but was a parallel mechanism for urban development. The idea was that the DFA would be a means of immediately creating a much faster process for the approval of land development proposals. This was primarily aimed at dealing with the anticipated large number of and very necessary development applications dealing with reshaping the apartheid pattern of urban land use.

The DFA was enacted to provide for an inclusive system of planning to deal with all aspects of urban development and for all communities and circumstances which had been excluded in the past. It was an early attempt to transform planning practice although it was an interim measure. For this purpose the Act

created a national planning commission to advise on and make recommendations to government on matters for a more comprehensive land use planning system. The planning commission was established and set about its task with vigour. The commission included prominent people and academics familiar with the issues of urban development but included few practising town planners. Nevertheless, it understood the general inadequacies in urban planning and its deliberations and work led to a government White Paper entitled "Wise Land Use". This White Paper set out government policy for a reformed system of urban planning. In this policy were matters of principle and particularly, three important criteria. These were that a new system should be **simplified, more efficient and less restrictive**. It was well known that the process of development was complex and lengthy and, particularly with respect to zoning, was unduly narrow and restrictive. What was envisaged was a new system of planning legislation to be applied in all towns and cities in every province.

The DFA not only created a new and alternative procedure for land development it also created a new structure for development decision making. This was in the establishment of development tribunals to consider and decide on all land development proposals under the Act. Each province was mandated to establish a development tribunal which had several notable features. Firstly, the tribunal was a provincial body so that land use development procedure was removed from the hands of municipalities. In this process a municipality was limited to providing comments on proposed land development and had little, if any, role in land use decisions. The operation of the DFA in any province was dependent on the establishment of a development tribunal but not all provinces did so and the Act did not operate in some provinces such as the Western Cape.

Also notable was that the composition of a tribunal was almost entirely made up of town planners, engineers, lawyers and others from the private sector so that municipal and provincial officials and elected representatives were excluded. In addition, the development tribunal was given extraordinary powers. The tribunal could suspend the provisions of any other legislation which might otherwise impede or frustrate a particular land development. A decision of a development tribunal was final although it was subject to appeal to a provincial appeal tribunal

of similar composition and authority. There was no involvement of political representatives in the development approval process. Lastly, the DFA provided for expedited procedures to reduce the delays in the land development process. All of this was reflected in much of the thinking of the national planning commission and the subsequent White Paper but was to have important consequences as will be seen.

The DFA was drafted with an understanding of the inadequacies of existing planning practice and included for the first time in legislation a method for the third element of urban planning – strategic land use or spatial plans for the future. This was in the requirement that a municipality must prepare *Land Development Objectives (LDOs)*. The purpose of these LDOs was to create a policy framework for future land use and to coordinate and integrate all the components of urban development. It was to provide guidelines and reference criteria for the development tribunal in deciding on land development applications. Municipalities were now required to produce strategic development plans of the kind envisaged at the time of the Transvaal Ordinance in 1986. The concept of these future development plans was generally accepted but there was little common understanding of what their form and content should be in practice. Town planning had for so long been just the regulation and control of land use that the preparation of LDOs required a new element of planning practice for which there was little experience or expertise.

The operation of the new planning system under the DFA proceeded quite quickly but was limited in its application for two reasons. It was too soon for any land development proposals for radical changes of the racial land use patterns to have been prepared to make use of the new procedure. Also, a land development application under the DFA was a far more onerous and complex process than that of the alternative ordinance procedure so that mostly its use was only for major commercial development schemes. In time, the DFA procedure was more frequently used but it was predominately concerned with private sector land development of a commercial nature rather than with that relating to disadvantaged areas. The attraction of the DFA procedure was that it

made the approval of an application possible within 5 months instead of about 2 years in terms of the Ordinance.

While the DFA initiated a significant change to planning practice there were other reforms which affected urban development. The structure of municipal government was altered by the Constitution and led to the creation of three different forms of local government – metropolitan, district and local municipalities. New municipal boundaries were created so that the entire country fell within areas of municipal jurisdiction. In Gauteng the municipal areas of Sandton, Randburg, Roodepoort and others were absorbed into one greater metropolitan municipality of Johannesburg. A result of this was that Johannesburg now administered 14 different town planning schemes each with different zoning provisions.

While all this change was taking place and introducing new complexities to urban planning administration and practice, another significant aspect of municipal planning was introduced. The change to government structures in terms of the Constitution removed municipalities from an almost subservient position and gave them new responsibilities. In the *Local Government: Municipal Systems Act, 32 of 2000* (Systems Act) the new municipalities were required to produce an *Integrated Development Plan* (IDP). This includes the component of a future urban land use development plan which is called a *Spatial Development Framework* (SDF). As its title suggests, the SDF is a plan for future land use development which is the third element of urban planning. It is to include “basic guidelines for land use management” in the municipality. The concept of an IDP is sound but there was little if any indication of how it and the SDF should be applied in urban planning practice and there was no clarity of what was meant by its reference to “land use management”. The Systems Act clearly encroaches into the territory of urban planning but does not deal with the subject in any comprehensive way as was contemplated in the earlier White Paper. Whether or not this was a result of its authors not appreciating the full scope of land use planning or because it was intended that the process, methods and operation of urban planning would be in separate new planning legislation is uncertain.

Municipalities proceeded to produce IDPs and to the extent that the SDF component duplicated the LDO of the Development Facilitation Act, the LDO was discontinued. It was stated that a LDO was incorporated in the SDF. Now there existed the Systems Act, the DFA, the provincial ordinances and a vast array of other legislation on ancillary aspects of urban planning to make the practice of land use planning and development a somewhat disjointed business. This situation continued with the Townships Board, the DFA development tribunals and municipalities all being involved in the urban planning process which also included national or provincial government departments which controlled matters such as environment, heritage, water affairs and land subdivision. Truly a minefield for planning practitioners and land developers. But a revolution was yet to come.

## REVOLUTION

Following the introduction of the Development Facilitation Act and then in 2001 the White Paper policy on a future system of spatial planning, nothing further took place at national government level to further the reform of planning practice. On the understanding that urban land use planning would be the subject of provincial legislation, some provinces proceeded to prepare new provincial planning Acts to replace their ordinances. In Gauteng a new planning Act was approved in 2003 but did not come into effect as the necessary regulations to the Act were never completed. The Gauteng Act attempted to introduce the intended new system of urban planning based on the principles and criteria of the White Paper. One aspect of this was that the MEC<sup>2</sup> of the province would no longer have any power to decide on municipal planning matters such as land development appeals. However, between the publication of the final draft of the Act and its adoption by the provincial council, changes were made to give the MEC the power to make final planning decisions. This was nothing less than a reverse to the much maligned provision of the Ordinance and a surprising move by a new democratic provincial government which was committed to eradicating the practices of the past.

Some other provinces introduced new provincial planning legislation including for example the Northern Cape and Kwa Zulu Natal. These provincial Acts vary considerably and do not always clearly reflect the intentions and principles of government policy. The Gauteng Act of 2003 also had its inadequacies. The province had attempted to detail every possible aspect of urban planning practice and procedure and to eliminate any aspects of uncertainty. Many of the Act's provisions were not welcomed by municipalities who had different ideas on

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<sup>2</sup> MEC – Member of the Executive Committee

what and how the development process should be prescribed. However it became quite apparent that both provincial and municipal officials assumed that existing methods of planning practice only needed adjustment rather than a fundamental change to previous procedures. This is an ongoing stumbling block to meaningful change of the land use planning system.

A second attempt at producing new provincial legislation in Gauteng was undertaken and a new provincial Act was drafted. This became the subject of extensive consultation with municipalities but never reached any finality. There was a growing attitude that municipalities should be more independent in determining how urban planning should operate under their own jurisdiction and that the province should retreat from dictating urban planning practice. In the end there was inadequate consensus under the Constitutional imperative of cooperative governance so that the proposed new Gauteng Act died an impotent death.

Then came the revolution in 2010. This was not a revolution in the sense of turning around the practice of urban planning, it was a revolt by municipalities led by Johannesburg. The Development Facilitation Act had continued to operate and time and again the provincial development tribunal made decisions on development applications which were against the wishes of the municipality. In one particular case the Johannesburg municipality opposed a land development application on the grounds that it was contrary to its Spatial Development Framework policy. The municipality saw the SDF as having the force of zoning which was totally binding. The tribunal correctly found that the SDF policy in that case was so inappropriate and illogical in the circumstances that it had no relevance to the application. It provided no sensible guideline as intended. The land development application was approved but, as with other similar cases, Johannesburg had had enough of being subject to the tribunal decisions. It now turned to the law.

The Constitution provides for the responsibilities and authority of the three spheres of government. In schedule 4B of the Constitution the executive authority in matters of “municipal planning” resides with municipal government.

The Johannesburg municipality asserted that land development such as township establishment and land use zoning were “municipal planning” and that these matters could not be decided by a provincial body such as the DFA development tribunal. The revolt was when the municipality took the matter to court. In brief, the dispute ended in the Supreme Court of Appeal in Bloemfontein where the finding was that the GDT and its decisions were unconstitutional. The court found without any doubt that township establishment and rezoning fell squarely within the subject of municipal planning. In due course, with numerous different interests involved, the Constitutional Court confirmed the Appeal Court decision. The life of the DFA development tribunals and the Act itself was at an end.

There is little difficulty in concluding that urban land use and development are subjects of municipal planning but in some respects the Constitution is not entirely clear. Part B of Schedule 4 of the Constitution which includes municipal planning, sets out the matters over which a municipality has *executive authority*. In the debates and arguments surrounding urban planning it was often stated that a municipality had “exclusive” authority in municipal planning. But the word exclusive does not appear where the Constitution refers to the powers and functions of municipalities. At the same time, Part A of Schedule 4 gives provinces legislative competence on matters of *urban and rural development*. It is difficult to understand the dividing line between municipal planning and urban development or whether these two functions are entirely separate subjects. This uncertainty raises questions concerning the measures for urban planning practice which were to follow.

The effect of the Constitutional Court judgement raised to a more critical level the question of how urban planning was then to be conducted. If provincial involvement in the process of urban planning under the DFA was unconstitutional it surely followed that the same applied to the role of the provinces in terms of their planning ordinances. The prospect was that sooner or later the ordinances would be declared invalid and then there would be no planning system for towns and cities at all. With this looming problem, national government finally after more than 10 years of inactivity, set about preparing

national legislation which had been the intention of the White Paper. The task was undertaken by the Department of Rural Development and Land Reform which is not exactly the most appropriate department title when it comes to the subject of urban planning.

In the process of creating a new system of urban planning the national department held numerous regular workshops with the provinces and municipalities in the drafting of what was to become the Spatial Planning and Land Use Management Act or SPLUMA as it is commonly known. It soon became apparent that if the conception was easy, the gestation of the Act would be difficult. The various provinces had widely differing views on the form and content of the Act and the major municipalities had some very strong ideas of not being limited in deciding for themselves how to conduct urban planning and development. It was also evident to any participant in the consultations on the new legislation that the national department had very limited knowledge and experience of urban planning practice. A difficulty in the discussions was that very often there was no clear and common understanding of concepts and objectives. The drafting of the Act did not start from a proper statement of purpose and the criteria of the White Paper policy on “Wise Land Use” seemed to have been forgotten. In many respects practical issues were elusive. As an example, the Free State showed that so few municipalities in the province had qualified town planners they could not possibly take on the responsibilities of urban planning. Then there were also difficulties of definition. The notion of *land use management* was the new terminology for planning regulation to replace the now unacceptable term of development control. There is still no common explanation of what land use management is intended to be. It is clear that many involved in urban planning continue to think that zoning alone is land use management and that it should be as detailed and prescriptive as possible in order to improve the physical quality of urban development. All this does is to increase the administrative burden of the system and to delay development when the skills resources of municipalities are severely limited.

There were two essential issues to resolve in establishing a new planning system. The first is whether the national Act should be simply enabling legislation

or create a single comprehensive process for all municipalities. The second is whether one planning system can deal with both metropolitan cities and smaller towns. The metropolitan municipalities were firmly of the opinion that national legislation should only be a broad framework of law and that they would deal with the substance of urban planning to suit their own needs. Some provinces such as the Western Cape, Kwa-Zulu Natal and the Free State, each for different reasons, wanted to have a substantial role in urban planning. In the end SPLUMA was neither just enabling legislation nor did it comprehensively provide for all three elements of urban planning. A view is that this new Act was not a revolution; it just rearranged the same pieces on the chess board. The very basic issue which has been overlooked goes back to the peculiar circumstances of spatial development in this country. Cities in South Africa are a well industrialized first world economy but are side by side with an underdeveloped third world environment. The first requires a sophisticated system of urban planning while the second needs a more basic, simplified method of land development. Is this possible in one unitary approach to the problem? Some of the past and present difficulties can now be considered before taking a closer look at SPLUMA.

## OPERATION

To focus on urban planning practice and how it has operated, some history of the Townships Board provides a few examples. Until 1986, all rezoning and township applications in the province of Transvaal were considered by the Board for recommendation to the Administrator. Whether the Administrator himself had sufficient time to fully and critically consider all the numerous land development recommendations is surely doubtful. Unofficially it was known that the Board's recommendations were almost never reversed. On his appointment, one Chairman of the Board publicly stated that if ever the Administrator did not accept a Board recommendation he would immediately resign. The common view was that effectively, the Board dictated planning practice. After 1986, apart from some administrative matters, the Board only dealt with appeals against development decisions by the municipalities but this did not greatly diminish its influence on urban planning. The operation of the Townships Board therefore gives some insight to how planning operated.

### *The Townships Board* 1965 – 1985

In the 1965 Transvaal Ordinance the Townships Board was comprised of 14 members. The chairman was a person appointed by the Administrator and was usually a retired attorney. The composition of the Board was determined as government officials including the Registrar of Deeds, Surveyor General, Director of Local Government, the Director of Roads and others. To complete the numbers, up to five other persons who were not government officials were included. Other than minor consent use matters which were decided by the municipality, all land use applications were submitted to the province for decision. After all the relevant national departments and agencies, provincial

departments and the municipality had submitted comments on the application, the matter was placed before the Townships Board for consideration including any objections from the public. In those days, before it made any recommendation on an application, the Board conducted a site inspection in every case. In addition, if the municipality opposed the approval of the application or there were public objections, the Board held a hearing of the application. In Johannesburg the Board conducted site inspections almost once every week. On any one day the Board could have as many as 5 or more site inspections and on these occasions officials of the municipality would be present to explain its views on the application. When it came to a hearing of a land development proposal this could often extend over two or more days. It was then that interesting and sometimes quite peculiar arguments were presented.

#### *Case 1*

In the 1960s the idea of decentralised urban development came to South Africa. In particular, the concept of the regional shopping centre was seen to be the new development opportunity to satisfy consumer retail demand in the sprawling suburbs. The first of these was the Eastgate centre which was established on a site which extended across the boundary between the Johannesburg and Bedfordview municipalities.

At a smaller scale, but still large by suburban standards, was the proposed Firs retail and office centre in Rosebank. Rosebank had a small group of shops along its eastern boundary and another on the western side of the suburb. Next to the eastern group of shops was a large residential property with a dwelling house which some years before had been converted into an old age home known as The Firs. In adjoining the existing local shopping area, The Firs site was seen to be an ideal location as an extension of the existing individual shops. In addition, it could be developed with its own on-site parking when there was limited parking available only on the streets.

The rezoning application for The Firs raised the most vigorous opposition by the City Council. The proposed development was seen as a destruction of stable suburban land use, an unnecessary and unjustified intrusion into the residential area and a disruption of the established pattern of zoning which was quite adequate for all needs. After consideration and recommendation by the Townships Board, the rezoning was approved by the Administrator. The City Council was incensed and saw the Administrator as having gone too far in dictating how Johannesburg should be planned and developed. The Council then took the novel step of itself applying to amend the approved zoning of the site to reverse the newly approved business zoning.

The further rezoning of The Firs site by the Council only delayed the development of the new centre because the rezoning needed to be approved by the Administrator. It should have been seen as practically inevitable that the Townships Board and the Administrator would not change their previous decisions. The Council's rezoning was unsuccessful and so the shopping centre zoning was reinstated by the Administrator. The Council was so enraged that it then amassed its legal resources and took the matter to court. The argument was that the Administrator's decision was clearly wrong and so unreasonable that it should be set aside. Without success in the provincial courts, the Council was so determined that it went as far as the Appeal Court where, to its dismay, it was again defeated.

## *Case 2*

The Firs case was not the end of the saga. Not long after The Firs was developed, a regional shopping centre was proposed in the adjoining municipality of Sandton. This was to be the business centre for the new municipality which was almost entirely a suburban residential area of the metropolitan city. To complicate matters, the site chosen for this revolutionary new land use was in a very low density residential area which was one of the wealthiest suburbs in the city. The location was certainly suitable to provide shopping facilities to, and capture the market of a community with considerable

spending power. It would however be an intrusion into a tranquil, leafy residential area of influential citizens. This was a classic case of commercial progress versus maintaining private residential interests.

The newly created Sandton municipality faced a dilemma. It did not want to alienate its citizens and voters but it was seduced by the sorely needed income potential of a high value land use. The process was protracted and the rezoning was approved after about 4 years. In an attempt to mitigate the impact of a large scale, high rise development on the adjoining residential area, some peculiar development conditions were subsequently included in the non-residential zoning. Business buildings were to have pitched roofs to be covered by residential building materials such as slate or tiles. This, it was thought, would make the development more harmonious with its residential surroundings. Eventually, the centre known as Sandton City was developed and proved to be a catalyst for the quite unforeseen development of the Sandton CBD which has emerged today. The creation of Sandton City had two notable effects. One of these was the subsequent development policy plan of the Sandton municipality which severely restricted any expansion of business development around Sandton City. The other was the reaction it created in Johannesburg.

### *Case 3*

The approval of the Sandton City development was not without an effect on the town planning ideas of the Johannesburg City Council. It slowly, if reluctantly accepted that decentralization of shopping and office development was inevitable and needed to be part of town planning practice. In addition, the advent of Sandton City made the Johannesburg Council realise that this would weaken its dominant position as the home of all high land value development in the metropolitan area and a response was necessary. It was then faced with a proposal to develop a regional shopping centre in Rosebank to become known as The Mall. This proposal was even more contrary to everything the Council had argued in The Firs development. The City Council now however, adopted a totally different attitude, if for no other reason, it wanted a share of the retail

development market to compete with Sandton City. It recommended the approval of the Mall. What this demonstrates is how municipalities struggle to accept land use change but will suddenly take a completely different view when their own financial interests are affected.

The development of The Firs and then the approval of The Mall made it clear that the greater part of Rosebank would no longer be a residential suburb. In an unusually positive response, the municipality undertook the preparation of a long term development plan for the area. This included provision for the development of offices and other business uses with a significant improvement of the main access roads around the emerging development node. The future Rosebank business area became well defined and satisfied a demand for office decentralization which only reluctantly had become accepted.

#### *Case 4*

By 1970 urban growth pressures in Johannesburg had started attempts to decentralize offices from the central city. On the periphery of the central city the historic and high income residential area of eastern Parktown had just been devastated by expropriations by the provincial government to make way for the new general hospital and college of education. What remained of the area was then the target for office development by the private sector. This area, to the north of the CBD, was convenient to commuters of the northern suburbs, would be highly accessible with the imminent construction of the M1 urban freeway and avoid the traffic congestion of the central city. This resulted in rezoning applications for office development. Accepting the need for land use change along this part of the Witwatersrand ridge, the Johannesburg City Council decided however that this should be a zone of "Institutional" land use. This meant the consolidation of existing schools, university expansion, new hospital and college of education, and further institutional land use. The City Council vigorously opposed a proposed rezoning for private office development and a protracted hearing was held by the Township Board.

It was already the custom to treat town planning matters as a legal dispute, probably for a number of reasons. The Townships Board outwardly adopted a legalistic approach in considering development proposals, the City Council, without any town planning authority, resorted to legal arguments and applicants adopted an adversarial approach. The public, lacking town planning expertise, appointed lawyers as the best means of promoting or protecting their property interests. All sides often employed attorneys or advocates to argue their cases. In this Parktown case the applicants were a financial investment company and appointed an advocate well known for dealing with town planning matters.

Lawyers are skilled at being persuasive and in the selective interpretation of law and definitions to promote an argument. In the Parktown matter this led to a rather absurd proposition. The applicant's advocate argued that the financial investment company was, like a bank, a *financial institution*. As such, its proposed offices would be an institutional use and quite appropriate to the City Council's intended development of the area. Anybody who understands land use zoning knows that this suggestion is quite disingenuous. There was another consideration. Institutional land uses are generally government operated purposes or those of social organisations. No such additional institutional development purposes were identified as being needed. The City Council's objective was therefore an entirely theoretical idea so that the remaining dwelling houses in Parktown East would remain frozen in a sea of non-residential development. Town planning practice cannot be abstract and operate on facile meaning. Predictably, the Board recommended the approval of the office rezoning.

#### *Case 5*

Following the Rosebank example, the Sandton municipality prepared a plan of some sort for its new town centre around Sandton City and the adjoining municipal offices. This plan or policy was very restrictive on any business extension and allowed for little rezoning. At this time however, the pressure for office decentralization from the centre of Johannesburg was reaching a much higher level. Large business organisations, professional firms, medical services

and other office tenants no longer saw the need to be located in the Johannesburg CBD. On the contrary, there were advantages to being away from the city centre which was becoming more congested and less accessible.

In the case of the Sandton town centre the Council's plan to limit expansion was strictly applied and, despite rezoning applications, the Townships Board generally supported the policy. Then, in the late 1970s, the Industrial Development Corporation (IDC) had its offices in central Johannesburg. The IDC needed to expand and required a new office building which it decided, should be decentralized. After considering alternative locations and suitable properties, a site was selected near the Sandton municipal offices but beyond the planned town centre. The site would need to be rezoned and on initial enquiry, the municipality was adamant that a rezoning for the intended development would not be considered under any circumstances – it was simply undesirable town planning. A few weeks later, when the IDC had established that the proposed site was available for purchase, the municipality suddenly made a complete about turn. The officials now actively encouraged the IDC to relocate to Sandton. What prompted the town council of Sandton to abandon its cherished town planning principles? It had realized that it needed business, commercial and industrial development to create an increased and sustainable income base for the municipality. This is just another example of town planning ignoring commercial reality until it becomes a municipal development issue. The rezoning of the IDC site followed, as did many more with the support of the Townships Board and approval by the Administrator.

### *The Townships Board*

*1986 – 2017*

The new Transvaal ordinance of 1986 made two significant changes related to the Townships Board. The membership of the Board was no longer made up of government officials and the total of 17 members, apart from a representative of the provincial roads department, were all persons appointed from the private sector. This immediately gave the Board a more independent character and it

could be seen to be less of an instrument of provincial government. The second change was a result of the new procedure of all land development applications being submitted to and decided by municipalities. No longer did the Board consider each and every application in the Transvaal. Apart from minor administrative matters its main function was now to hear and decide appeals against municipal planning decisions.

An application for township establishment or rezoning was processed by the municipal officials who then made a recommendation to the City Council for decision. In most cases the municipality delegated the decision making to a committee of the Council so that land development decisions were made by elected political representatives rather than by an independent body of experts such as constituted the Townships Board. Urban planning decisions by a committee of municipal councillors can be considered as a proper democratic process in which the municipal council is accountable to its citizens. The weakness of this system however is that urban planning and development can involve complex technical and legal issues for which political representatives do not have the knowledge and expertise. It could be argued that this is not critical as the municipal councillors are advised by their town planning and legal officials. Despite this however, there were regularly municipal planning decisions which lacked good technical motivation and as a result were taken on appeal to the Townships Board. Opinions will differ greatly on whether the process of municipal decision making and appeals to the Townships Board as a provincial body is an acceptable and appropriate way of administering urban planning. This debate was a sufficiently important topic to be a notable aspect of the White Paper policy which subsequently followed.

Other than the shift of urban planning administration from provincial government into the hands of municipalities, little changed in the practical effects of the system; not at least until the arrival of the DFA. As noted, this introduced for the first time the third element of urban planning – planning for future development. This was something new for the Townships Board to deal with in the form of the LDOs. In terms of the Act any proposed development was required “to be consistent with” the municipality’s land development objectives in order to be

approved. The LDOs produced by municipalities were very broad statements of intended land use development and were open to wide interpretation. A difficulty was, that as a new kind of planning document, it did not consider how general planning aims were to be translated into development reality. One particular case highlighted the problem.

### *Case 6*

The municipality of Midrand had its LDO which indicated the future development of a single large scale business node in the centre of the municipal area. Beyond this no other major concentration of new non-residential land use was indicated. A proposal was made for a large scale business and commercial development north of the town centre and beyond the development focus shown in the LDO. The town council approved the application but this was such an apparent deviation from what the LDO was understood to mean and presented a serious threat to other development interests that appeals were lodged against the municipality's decision. The resultant appeal hearing by the Townships Board lasted for a total period of more than 3 weeks.

Like so many other development and zoning disputes the appeal involved attorneys and advocates and much of the argument centered on legalistic interpretation and semantics. The principal issue of debate was the interpretation of the LDO. Was the proposed development application "consistent" with the LDO because, if it were not consistent it could not be approved. Those opposed to the development argued that the application could not in any possible way be seen to be consistent with the LDO and therefore should be refused. The argument for the applicants was that the application was not inconsistent with the development policy. This submission was that as long as the proposed development did not detract from development policy included in the LDO, it should be considered on its own merits. If it was not inconsistent with the LDO this was sufficient for its approval. In its findings the Townships Board concluded that the reasons by the municipality for its approval of the

development gave no explanation how it appeared to have disregarded its own development policy. In its reasons the Townships Board discussed the opposing views of consistency and inconsistency at length and in the end concluded that the application should be refused because it was not patently supported by the LDO policy. In this case, the town planning considerations were overshadowed by legal arguments of interpretation and semantics. All too often this has been the situation where urban planning has been treated as a trial of what is wrong and what is right or what is good or bad in law. Town planning is not susceptible to this approach. A number of years ago an eminent British town planner visited South Africa at the invitation of the local professional planners' institute. Sir Desmond Heap was a legal member (a special class of membership), of the Royal Town Planning Institute in Britain and in a lecture in Johannesburg he made the very pertinent observation that:

*“town planning is not a justiciable matter.”*

The meaning he intended was that the merits of a land use cannot be measured in legal terms. The desirability or otherwise of a planning proposal cannot be determined by legal argument – it is dependent on material circumstances and subjective values.

When the new town of Secunda was being designed for Sasol in the 1970s, the general concept of the “neighbourhood plan” was applied. This was to create a series of residential neighbourhoods each with its schools, churches and local convenience shopping centres. It was also proposed to provide medium density residential apartments above the local shops. The town planners were told by the provincial officials that this combination of residential and retail use was most undesirable and would not be allowed. How completely different was this to the energetic campaign today for a greater extent of mixed land use. What better example is there of the town planning truth in the quotation:

*“Today’s holy cow is tomorrow’s cold roast beef”.<sup>3</sup>*

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<sup>3</sup> Attributed to the poet Brendan Behan.

What these cases illustrate are two things. As urban centres expand by economic and population growth they increase in complexity and change in morphology. This then needs a planning response and new land use solutions are required. In the past, planning authorities were reluctant to adapt to new circumstances and to adopt new methods. This is possibly a legacy of there being only zoning as the single instrument of urban planning and which was regarded as being unchangeable. This is the very antithesis of the purpose of planning which is to provide for and manage change.

The second illustration is that planning practice was confined to being only reactive. It was a process of reaction to economic and development trends as they arose. Planning practice was not proactive either in anticipating or providing for future land use or in promoting development change.

## 6

### PURPOSE

To consider the effectiveness of the planning system requires a clear understanding of its purpose. For what reasons and to what ends is urban planning aimed? Until 1995 the development of towns and cities in South Africa was only governed by two of the three elements of a complete planning system – the location and growth of urban settlement by township establishment and the regulation of urban land use by zoning in a town planning scheme. These two elements provided a method of managing the form and pattern of urban areas. While these were components of *town planning* they were not planning in the greater sense of formulating a strategy for achieving an intended future result. A method of attempting to determine the future development of urban land use was not part of the system in this country.

Under the provincial ordinances the creation of new urban areas by township establishment was essentially a simple activity. This involved the procedure of preparing a layout plan, submitting an application, fulfilling technical requirements, surveying the land subdivision and registering the township in a deeds registry. If these steps were followed a new township would be established. The only practical limitations were the availability of essential services. Although simple, the process could be onerous and was lengthy. The requirements of numerous national and provincial departments could be problematic, particularly in the case of provincial roads and education. These departments alone took endless months to assess and comment on a proposed township. In the late 1970s township approval took about four to five years.

In White urban areas, township establishment was almost exclusively undertaken by the private sector. Township establishment for other communities was a national government function where planning was simply a matter of racial

segregation and housing necessity. Little wonder that these population groups ended up being located on the outskirts of the urban area far from places of employment and without their own shopping facilities. For years, government steadfastly refused to allow White capital to be invested in non-White areas to provide shopping, business and other facilities in the Black townships. This added to the distorted urban land use we still see today. So it was that there was no proper planning of urban areas. Added to this was the forced removal of non-White communities which destroyed urban areas like Vrededorp/Pageview in Johannesburg and District Six in Cape Town with no plan for their restoration.

A change of land use zoning was a more difficult process. Without any planning for the future this was a controversial and frequently disputed event. The Transvaal ordinance like most others, set out the criteria for town planning scheme zoning and the grounds to be used in support of a development application. These criteria should be examined. Section 19 of the 1986 Transvaal Ordinance reads as follows:

*“The general purpose of a town planning scheme (i.e. zoning) shall be the coordinated and harmonious development of the area to which it relates in such a way as will most effectively tend to promote the health, safety, good order, amenity, convenience and general welfare of such area, as well as efficiency and economy in the process of such development.”*

Like the American intention of zoning, the main purpose was seen to be the avoidance of nuisance and to maintain amenity. It was thought that this would generally be achieved by the separation of land uses which would in turn promote the preservation of health, safety, good order and convenience and thereby constitute the welfare of the community concerned. With this approach, the criterion for a change of land use zoning was that if it did not create any nuisance or loss of amenity it was acceptable. This is a negative test rather than a positive requirement. Other than the question of amenity, the criteria in section 19 of the Ordinance were hardly ever considered in rezoning proposals. Quite another consideration was applied from a somewhat obscure part of the

Ordinance. This is in a schedule to the ordinance regulations<sup>4</sup> which requires that a rezoning application include a memorandum motivating the *need and desirability* of the proposed zoning. Need and desirability were the two issues always in dispute when rezoning applications were considered by the municipality or the Townships Board. This is discussed in more detail later.

The stated purpose of planning, particularly urban planning, has now been completely changed. The DFA has been repealed and SPLUMA is now the primary basis of a new planning system. In Chapter 2, section 7 sets out development principles applicable to spatial planning, land development and land use management. It is in these development principles that the stated purposes of urban planning must be found. Unfortunately, there is no specific section of the Act which states how the purpose or the objectives of planning whether it be urban, rural, regional, provincial or national planning is to be achieved.

In section 7 of SPLUMA there are five stated principles:

- Social justice
- Spatial sustainability
- Efficiency
- Spatial resilience
- Good administration

Under each of these five principles are the particular results which the planning system is intended to achieve. The first four principles provide the aims of the planning system and therefore establish its purpose. The principle of good administration is not an aim or purpose of planning, it is simply a statement of how the planning process should be conducted.

Both the purposes of a town planning scheme and the principles in SPLUMA are very wide and general statements. They have some common criteria such as

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<sup>4</sup> Schedule 7

efficiency and economy but in the SPLUMA principles there are now more specifically stated aims that planning is to achieve. The principle of social justice is an aim not previously part of and could never have been a purpose of planning in an apartheid regime. It is this objective which now makes planning concerned with one of its original purposes – social welfare. Also significant is that the principles provide for planning measures to be the “flexible and equitable functioning of the land market.” These were not stated purposes in the past. SPLUMA does not use the term need and desirability as criteria in planning and this may change the way in which development decisions are made. Despite this however the new municipal planning by-law in Johannesburg persists with requiring need and desirability as criteria for a change of land use.

When it comes to making a development decision, SPLUMA more specifically states in section 42, the factors to be taken into account. These are: the public interest; constitutional imperatives; the facts and circumstances of the development application; the rights and obligations of those affected (by the development application); engineering services; social infrastructure and open space and any other prescribed factors. What exactly these factors entail in practice is not entirely clear. They would be far better understood if the norms and standards referred to in section 54 of the Act had been established. This is essential in order to establish a common understanding of what is required in land use and development but as yet these criteria have not been produced. What precisely is “the public interest” and “the rights and obligations” in matters of land use? It is quite certain that the answers to these questions would be as numerous and as varied as the number of people who were asked. The recurring theme in these essays is that the practice of planning in all the new legislation is no nearer reform or improvement.

## CHANGE

In the period of transition between the introduction of the DFA in 1995 and the advent of SPLUMA in 2013 the single change to planning practice was the introduction of future land use planning. This was firstly in the form of the LDO and then later as the SDF in the Systems Act. At last, the scope of urban planning could be considered complete. During this period urban planning continued to operate in terms of the provincial ordinances or the DFA but the LDO or SDF was added to the process. There was also the land development process of the less Formal Township Establishment Act, but this was infrequently used. The system however was fatally flawed as a result of the Constitutional Court ruling mentioned earlier and this made the new legislation of SPLUMA an absolute necessity. The expectation was that this new Act would resolve the problems of the past and urban planning practice could be completely transformed. However, the form and content of SPLUMA is not what many would have wished. It is a mixture of broad general requirements together with some specific prescriptive measures but a great number of the practical aspects of urban planning are not addressed. The difficulty it seems, is in balancing a single unitary national system of planning with the independent authority of municipalities. The reform of the planning system was a national priority and it was generally accepted that it should be standardized across the country. To achieve this, national legislation was necessary. There was no good reason for each province to have its own and, possibly different, planning Act, particularly as there were now nine provinces instead of the previous four. Another consideration was the need to coordinate land use and development matters of national, provincial and municipal interest. A single uniform system was required.

As an interim measure, the DFA had altered some of the land development procedures. This was mainly the decision-making process on development applications by a provincial tribunal. It also changed the system by introducing the much-needed method of planning for future development planning in the form of the LDO. The procedural changes also had the effect of making the process of land use change and development much quicker which was a welcome improvement for consulting town planners and the land development industry. It showed that land development proposals could be implemented after six months instead of the usual one and a half to two years. The introduction of the LDO however imposed a burden on municipalities which required new skills and staff resources which were not easily available. What the DFA did not do was to alter the process of township establishment except in minor respects and it did nothing to change the system of land use zoning. As a result, the planning system was hardly changed. In practical terms the DFA operated in parallel with the town planning ordinances except in those provinces such as the Western Cape which never established a DFA development tribunal.

Not long after the introduction of the DFA and only five years later, a further dimension of change was added to the planning system. This was by the enactment of the Local Government: Municipal Systems Act, 2000. This introduced the Integrated development Plan (IDP). The IDP can be described as a kind of corporate business plan which municipalities are required to prepare. It is a plan to coordinate and, as its title suggests, integrate all the activities, administration and functions of the municipality. Included as part of the IDP is the Spatial Development Framework ("SDF") which, in simple terms, is a land use plan for future development. In principle it is very similar to the LDO of the DFA. It is clearly a future land use planning instrument and there is some debate as to whether this should be in an Act which is not primarily concerned with land development and spatial planning. The purpose of the SDF fulfills the need for the element of future land use planning but would it not be more appropriate in spatial planning legislation?

While the DFA continued to operate, municipalities prepared IDPs with its component SDF and discontinued with the LDO. These two planning

instruments served the same purpose and as duplication was unnecessary, it was accepted that the SDF superseded the LDO. And so, within five years of democracy, all three elements – future development planning, urban settlement and land use regulation were in place. However, the urgent and basic reform of the whole system was ignored. Apart from having to accommodate the challenge of determining future land use and development strategies, urban planning practice remained essentially unchanged.

## LEGISLATION

The Constitutional Court judgement in 2010 which confirmed that the system of provincial development tribunals was invalid meant that the DFA could no longer operate. Existing development applications could be finalised but no new applications could be made in terms of that Act. In a number of ways this was a set-back to planning practice where the use of the DFA development procedure had been proven to be efficient and effective. However, there was a more ominous threat. The provincial townships boards were equally contrary to the concept of municipal planning and, as it was most likely that in due course they too would be declared invalid, there would then be no planning system at all. It was this, rather than the motive to create a comprehensive new method of planning, that finally sparked national government into action. The department of Rural Development and Land Reform announced its intention of preparing a new national Act which ultimately became SPLUMA.

In drafting the new Act the department consulted widely with the provinces and major municipalities. Regular workshops were held and there was extensive liaison throughout the process. But to some observers there were two major difficulties in the proceedings. There was never any clear understanding of whether the new national Act should be so-called framework legislation or whether it should be more detailed regulation to achieve a nationally uniform planning system. The provinces, particularly those with metropolitan municipalities, had long and considerable experience of the planning system and its administrative operation. They had the practical knowledge of regional differences of circumstances and understood the limitations in municipal administration. It was generally expected that the substance and detail of the new planning system would or should be in provincial legislation and that

national legislation need only be a broad framework. The large metropolitan municipalities did not quite share this view. They saw municipal or urban planning as their own exclusive territory and that national legislation, limited only to broad principles and intergovernmental coordination, would be sufficient without the need for provincial laws so that the detail of urban planning practice should be the subject of municipal by-laws. All these issues were never clearly defined and it became quite apparent that the national department had very little experience or appreciation of the technical and procedural operation of planning in the municipal domain.

The second and possibly the main difficulty, was the lack of a clear and agreed set of criteria for a new planning system. In the objectives of the Act, section 3(a) states that its purpose is to *“provide for a uniform, effective and comprehensive system of spatial planning and land use...”*. The key White Paper criteria of simplicity and efficiency are missing. In the drafting of SPLUMA important issues were discussed but the difficulties of practical, technical and administrative aspects were left aside. Then, when municipalities, the provinces and planning practitioners submitted comments and important representations to the parliamentary committee before the Act was passed, all the critical issues were ignored and the Bill was simply adopted in its original form. The conclusion seemed to be that these matters would be resolved in provincial or in municipal legislation. On unresolved aspects of urban planning it was frequently stated these could be dealt with in municipal planning by-laws. Certainly, SPLUMA creates neither a uniform nor a comprehensive system of planning across the country. Against this background there can be a closer assessment of the scope and content of the new Act.

Other than introductory and general provisions, legislation which concerns the regulation of an economic activity such as urban development has two main elements. The one element deals with the administrative and procedural arrangements for the activity to operate and the other with the substance of the subject. In its structure, SPLUMA is similar to the provincial planning ordinances but has two notable differences. The first is in the substance by the provision for spatial development frameworks as the means for the planning of future land

use development.<sup>5</sup> The second is that it does not distinguish between township establishment and zoning. The division or subdivision of land for urban settlement purposes and the redevelopment or change of use of existing urban land are together referred to as land development. A change not introduced by SPLUMA is in the administrative and procedural arrangements for land use management. The Act provided nothing new to improve the methods of land use zoning.

In SPLUMA, land development is described as township establishment, the subdivision and consolidation of land, the amendment of a land use scheme i.e. rezoning, and the removal of restrictive conditions (of title). But, unlike the provincial ordinances there are no requirements or procedures for these processes of development. The Act simply states in Chapter 6 that no land development may take place without the approval of the Municipal Planning Tribunal. Chapter 3 of the Regulations then requires that a municipality must determine the manner, format and other requirements of land development and land use applications. It is here that planning practice is intended to be decided by municipalities themselves. It is notable that this reference also refers to *land use* applications without any definition of how this differs from land development. This is yet another example of the vague wording and unclear meaning in the Act. The intention is further confused by Schedule 1 of the Act which provides that a province may legislate on all these matters which the municipality itself is obliged to determine. There may be an explanation for this uncertainty but it is a great disappointment that a guideline manual to the operation of SPLUMA has not been provided.

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<sup>5</sup> The Cape ordinance of 1985 provided for structure plans. In the Free State structure plans were simply prepared as a useful planning tool. In both cases however it is reported that structure plans were limited to selected areas only where particular issues of attention were identified.

### *Administrative and Procedural Requirements*

The first administrative requirement in SPLUMA is that “Development Principles” shall apply to the three aspects of planning being spatial planning, land development and land use management. In section 7 of the Act there are five categories of development principles. They are in effect, a statement of the purpose and aims of planning and should perhaps, more correctly be called planning principles as they apply not only to development but also to spatial planning and land use management.

The first category of development principles in section 7(a) is the principle of “social justice” which has six aims in paragraphs (i) to (vi). The first three aims are; to redress or eliminate past inadequacies of access to and the use of land; to eliminate the exclusion of communities; and to provide for land access by disadvantaged communities. Paragraph (iv) requires that land use management must include all areas and specifically, disadvantaged areas, informal settlements and former homeland areas. The fifth requirement in paragraph (v) is that of secure tenure and the incremental upgrading of informal areas while the last paragraph (vi) provides that no development decision shall be limited solely on the basis of affecting the value of land. All these aims are related to achieving general welfare.

Section 7(b) is the second category of principles relating to “sustainability” in which the aims are economic efficiency, protection of prime agricultural land, environmental management, the functioning of land markets, the economic provision of infrastructure and services and the limitation of urban sprawl.

In section 7(c) the third category is that of “efficiency” in development with the aims of optimizing resources, minimising negative development impacts and ensuring time limits to land development procedures.

The fourth principle is the aim to limit negative economic and environmental impacts of development by providing for “flexibility” in the planning system.

Lastly, the fifth principle is that of “good administration”. This is not exactly a principle of or for planning but rather a statement of how the system should be operated.

These principles provide the criteria for planning and in effect set out its intended results. This is wider and more adequate than the purposes contained in the provincial ordinances which only related to town planning schemes. But while the principles are a statement of what is to be achieved, the Act does not explain how these aims are to be accomplished. For that we need to look at the substance of the planning system which follows later. As had been so strongly advocated and was an important policy approach of the White Paper, the new Act intends that the use of land and its development management be determined by norms and standards. The reason for this approach is for the quality of land use to be measured by performance criteria and not by narrow rigid rules of zoning. The norms and standards are not specified in the Act but are to be prescribed by the Minister (of Rural Development and Land Reform). In describing the norms and standards to be prescribed, section 8 of the Act includes some interesting items.

The Act sets out the subject matter to be included in the norms and standards. The norms and standards and their content are thus a mandatory requirement for the Minister to provide but nearly eight year later, other than time limits, have not yet been prescribed. The first notable provision is that the norms and standards must promote social inclusion, desirable settlement patterns, rural revitalization, urban regeneration and sustainable development. Most of these subjects would be familiar and understandable to town planners but two are uncertain. Social inclusion and spatial equity are concepts which have not been applied in planning practice in the past and only when the norms and standards are prescribed will there be any appreciation of exactly what is intended. If apartheid laws and policies of discrimination and segregation no longer exist there should be no social exclusion which needs to be addressed. In the context of urban development there is obviously the legacy of geographic exclusion created by group areas which is still very much a physical feature of the urban landscape. It needs to be established whether social inclusion means reducing

or eliminating the pattern of racially different and separate urban areas or whether it means something else. Urban planning deals with the physical built environment and cannot, except indirectly, alter social circumstances. It has become obvious that the meaning of social inclusion and what urban planning measures can be applied to achieve this goal, are not at all identified. This is considered in the discussion on inclusionary housing later in this chapter. The intention behind the term “spatial equity” is equally elusive at present.

The second notable subject of norms and standards to be prescribed concerns the efficiency and effectiveness of development and land use management procedures and timeframes. Only time frames have been prescribed in the Regulations promulgated in 2015.<sup>6</sup> There is more to be said on this topic when it comes to the current operation of planning by municipalities.

Lastly, the prescribed norms and standards are to standardize the symbology of all maps and diagrams. This presumably means the maps and diagrams used in SDF documents and in zoning maps about which there is much to be debated.

The 2015 Regulations to SPLUMA do not include any norms and standards intended in section 8 of the Act other than timeframes for land development and land use applications. These relate to the development principle of efficiency and Regulation 16 provides that the approval or refusal of an application shall be decided within a total period of 16 months after it is submitted to the municipality. In the metropolitan municipalities of Gauteng, which probably account for no less than 90% of all development applications in the province, the time taken for a decision is generally 18 months and often longer. The time limit of 16 months in the SPLUMA Regulations does nothing to improve the delay in the development process. This is not the efficiency in the practice of urban planning that many had expected and nothing like what was achieved by the DFA. What should be a reasonable time period and what is practically possible is a matter of opinion and is dependent on the organization and resources of the municipalities. Without any prescribed norms and standards, giving effect to the

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<sup>6</sup> Spatial Planning and Land Use Management Regulations: Land Use Management and General Matters, 2015

development principles is a difficult proposition. The principles are wide value statements which are not easy to interpret and apply. Thus far, the goal of reforming the land use planning system has not been achieved.

Chapter 3 of SPLUMA is titled “Intergovernmental Support” and concerns the relationships between the three spheres of government in matters of spatial planning. This, it appears, relates to the principle of good administration which, as already noted, is not so much a development principle as it is an operational ideal. While urban land use planning is seen to be exclusively the function of municipalities, the necessary involvement by national and provincial government in performing their functions in towns and cities has an effect on planning practice. Nowhere is this more evident than in the case of national and provincial roads in urban areas. There are also urban land use facilities such as hospitals, electricity generating stations and especially schools which are not provided by a municipality but which have an impact on planning practice. Some of the difficulties encountered with this in planning practice are illustrated in the later discussions on the SDF in the chapter on Spatial Planning.

In Chapter 3, national and provincial governments are enjoined to assist and support municipalities in spatial planning and land use management and it provides for a province to determine matters of “provincial interest”. This would allow a province to have a say in aspects of urban planning. Specifically, it states that a province may enact legislation to provide for matters in Schedule 1 of SPLUMA. There are 27 matters listed in Schedule 1 related to land use and development which a province may regulate in terms of a provincial Act. These appear to include almost everything in the system of urban planning, most of which concern administrative and procedural matters. There are however three items of particular interest in planning practice.

The first item of interest in Schedule 1 is that provincial legislation may:

*“provide a uniform set of land use zones to be used by municipalities in land use schemes”.*

This would result in the standardization of land use zoning in a province and achieve a goal of uniformity in the planning system.

The second item of interest is for provincial legislation to provide:

*“a single uniform system for land use and development ...”*

This seems to mean that all procedures and requirements in addition to zoning could be determined by provincial government.

Perhaps the third item is most significant. It provides for the province to stipulate measures in development which:

*“... requires the use of land for inclusionary residential and economic purposes ...”*

These three items of provincial competence all relate to the planning of urban areas and are therefore matters or subjects of *municipal planning*. If this is correct, and there are many municipalities which hold the view that this is absolutely certain, then the issue arises whether this part of SPLUMA is consistent with the Constitution. Many municipalities hold the opinion that they alone can determine these matters. This again raises the question of the meaning of the term *municipal planning*.

Chapters 4 and 5 of SPLUMA respectively deal with spatial development frameworks and land use management. This is the substance of planning practice which is considered in the discussion of current planning practice in chapter 10. It is somewhat surprising however, that the entire chapter on land use management is devoted only to land use schemes and indicates that the meaning of land use management is just the operation of land use zoning. Herein lies a contradiction and lack of clarity. In general, the title of the Act implies that land use management means both zoning measures and land development requirements and procedures. In SPLUMA, zoning is now the subject of Chapter 5 and quite separately, Chapter 6 deals with Land

Development Management which is not a term referred to in the purposes of the Act. This confirms the suspicion that the intended meaning of the term land use management remains uncertain. If, as Chapter 5 of SPLUMA suggests, land use management is nothing more than the regulation of land use by zoning, then nothing has changed from the past when land use planning practice was little more than a matter of development control.

In fact, the land development management in Chapter 6, except for two brief items, does not contain any substantive matters concerning development. It concerns the administrative and procedural requirements for development. The two brief items are the provision of engineering services and of land for parks, open space and other uses in sections 49 and 50 of the Act respectively. The addition of land to be provided for “other uses” is new to planning practice of the last 30 years. What is intended by the term “other uses” is completely unknown as the wording in section 50 only refers to parks and open space. Other than this, Chapter 6 sets out the administrative arrangements and process to be followed in the consideration and approval of a land development application. It provides for the establishment and structure of Municipal Planning Tribunals. There are 5 sections in SPLUMA which deal with the establishment of a planning tribunal with considerable detail of its organization. In addition there are no less than 13 related regulations. This indicates that the making of land development decisions was considered sufficiently important that the subject should be prescribed in detail. Despite this, the equally if not more important, development decisions on appeal are treated with almost superficial concern. There is only one section of the Act for the establishment of an appeal body and the whole appeal procedure is left for the municipalities themselves to determine.

In section 40 of the Act, the function of a municipal planning tribunal is to consider and decide on the approval (or refusal) of land development applications. It also provides that some application decisions may be delegated to a municipal official. As a mandatory requirement, a planning tribunal is to be made up of municipal officials and of experts who are not employed by the municipality and it may not include municipal councillors. This composition of a tribunal is as was proposed in the White Paper policy and has resulted in a

change to some of the earlier tribunals or planning committees of some municipalities in Gauteng where previously municipal councillors were included. Despite the provisions concerning the composition of a planning tribunal, the Johannesburg municipality has chosen to ignore these requirements. In its municipal planning by-law of 2016, the City also prescribes that its planning tribunal must have members who are not municipal officials. In the subsequent establishment of its tribunal only officials were included which is contrary to the peremptory requirements of the Act and its own law.

Did the municipality deliberately decide to only include municipal officials and to ignore the law? This would make decisions of the tribunal invalid. There is a suspicion that the City was seduced by the belief that its constitutional executive authority in municipal planning means a licence for it to do whatever it likes in urban planning practice. The same can be said of the Council's new policy on inclusionary housing which is discussed later in this chapter.

Of considerable interest is that nowhere in the land development procedure in Chapter 6 is there any specific requirement that public notice of an application must be given. This requirement has come to be regarded as essential, if not legally imperative, in order to ensure public participation in the planning process. In the subsequent Chapter 7, which provides for Regulations to the Act, the Minister may, by regulation, prescribe the process for public participation but as yet there is no such regulation. Is this a material inadequacy or can it be presumed that other laws adequately provide for this omission? If public notice of a land development proposal is an absolute necessity, it is most surprising that neither the Act nor the Regulations provide for this practice. To this extent the Act cannot even be said to provide a framework and yet in other respects such as land use schemes, it is relatively detailed and specific. The only reference to advertising and notification is in schedule 1 which is a subject which only may, but not must, be included in provincial legislation. This gives the impression that the authors of SPLUMA did not consider public notification sufficiently important to need any elaboration in the Act or as already suggested, they did not have an adequate understanding of planning practice.

Of particular concern regarding public participation is that Section 45 of the Act provides that an “interested person” may petition to intervene in an application. Quite how someone becomes an interested person only after a notice of an application has elapsed is somewhat obscure. The real concern is that intervention may be made at any time and as late as just prior to a decision being taken on the application. This is certain to delay the application process, frustrate municipal administration and unfairly prejudice an applicant. In the past there have often been cases where objections to development have been lodged by competing business interests simply to delay a competitor in the market or just to be vexatious. The prospect of intervention can only aggravate this difficulty. Just why this peculiar provision to intervene was created has never been explained. The same intervener status is possible in an appeal which makes the idea even worse. It has long been part of the land development procedure that an applicant or an objector has the right of appeal against a land development decision. This has become accepted practice and is arguably a tenet of our administrative law, but to extend the right of appeal to a person who was not a party to an application in the first instance is unnecessarily excessive.

In section 51, the Act provides for what it calls “internal appeals”. An appeal against a decision of the planning tribunal is to be made to the executive authority of the municipality which is defined as the mayoral committee, the executive mayor or a committee appointed by the municipal council. This means that the appeal body is comprised of elected municipal Councillors or officials with no independent experts. This is the very opposite of the composition of the planning tribunal and is contrary to the White Paper policy principle that political representatives should not make development decisions. It has also been argued by experts on administrative law that an administrative appeal such as this should be by an independent appeal body. Whether or not municipal councillors are equipped with the necessary expertise and experience in planning matters, there has to be a major question mark against the independence and objectivity of this internal appeal body created in SPLUMA. A planning decision by a tribunal is a decision of the municipality and the internal appeal body is a part of the same municipality. The consideration and decision on an appeal is therefore made by the same organisation which made the

decision in the first instance. Can it be in any way reasonable or fair administrative justice for a municipality to be the judge on an appeal against its own decision? This surely must be fertile ground for legal challenge.

It is not just the questionable legal basis of the appeal body which is cause for concern, it is also the appeal process which is followed by some municipalities which is problematic. In Johannesburg for example, once an appeal has been noted, a report on the case is prepared by the municipal officials for submission to the member of the Municipal Committee, for a decision. This is the same body of officials which not only made the recommendations on the development application but who also constituted the planning tribunal which made the decision which is on appeal. It is extremely difficult to believe that the report on the appeal can be properly objective or be seen to be unbiased. Equally disturbing is the fact that the report to the appeal body is not copied to the parties in the appeal for their comment before the appeal decision is taken. Hardly a transparent process or fair administrative justice.

The appeal procedure also has a practical inadequacy. Experience shows, and it is inevitable, that decisions on land development applications are not infrequently incorrect or are badly made and represent poor results. An appeal is a means of rectifying bad decisions. It is reported that since the introduction of SPLUMA there have been several hundred appeals in Johannesburg and only two or three have been upheld. That so few appeals have been successful is more than surprising. Many years of planning practice suggest that this system of appeal has very little meaning.

There are some differences in the composition and procedures of the appeal bodies of other municipalities in Gauteng which may make them slightly less unsatisfactory than the Johannesburg example. But they would suffer the same inadequacies of the SPLUMA internal appeal mechanism. Section 51 of the Act does however provide for an alternative appeal body. This is "a body or institution outside of the municipality" which is to be as regulated by provincial legislation. This is an alternative body which a municipality may choose to appoint if it so wishes. There is as yet no new provincial legislation in Gauteng

to make this possible so the prospect of a legitimate system of appeal is only theoretical. It could perhaps be argued that planning does not need to provide for an appeal against the decision of a municipality and that a decision of a municipality should only be subject to review. That proposition is left for the legal fraternity to debate.

Finally, section 52 in Chapter 6 concerns development which affects the national interest. In such a case the application must be referred to the Minister. It is difficult to anticipate what particular kinds of land development may affect the national interest. In section 52 the Minister is required to prescribe – presumably by regulation – criteria to guide the interpretation of the meaning of the term *national interest*. As yet no such criteria have been prescribed. Surprisingly there is no similar provision relating to matters of provincial interest.

Chapter 7 of SPLUMA deals with general matters for the administration of the Act and do not affect planning practice to any significant degree. The important matters of substance in planning practice now follow.

### *Substantive Matters*

In SPLUMA there is no longer the traditional distinction between township development and rezoning. The creation of urban areas and the change of urban land use are now both referred to as land development. While the administrative details of these two activities differ in some respects there is little reason to distinguish between the two in broad national legislation. There are thus now two elements of planning being the planning of future land use and land use management.

### *Spatial Planning*

Future land use planning is in the form of spatial development frameworks and, in addition to a municipal SDF, the Act also makes provision for national, provincial and regional SDFs. This takes the ambit of planning relating to land

use and development well beyond the scope of the provincial planning ordinances of the past and introduces a new dimension to urban planning.

National and provincial SDFs are a mandatory requirement to be prepared respectively by the national Minister and the Premiers of each province. These SDFs are described in Chapter 4 of the Act where the main purpose is clearly to coordinate and integrate planning and development at all scales and levels throughout the country. An ambitious undertaking. The stated intention is to guide planning and development across all sectors of government; guide spatial planning decisions by provinces and municipalities; provide direction for strategic development and infrastructure investment; and other objectives. The aims are centred on the spatial aspect of development and would primarily be concerned with land use planning. Potentially these national and provincial plans could have a significant influence on municipal planning. In dealing with the content of the national SDF, the Act gives six results that the plan must achieve. Five of these concern what the national SDF purposes are but not the material content. One item of content is included as the indicated “desired patterns of land use in the Republic”. It is to be presumed that these land uses would be extremely broad and be confined to land use related to the activities of national government. This is more likely and only practical as national government would not have the capacity to become involved with provincial or urban planning detail.

Provincial SDP's are quite different in their content. Other than a distinction between national and provincial planning interests, it is difficult to understand why the generic contents of both SDFs are not the same. A provincial SDF is required to indicate an intended pattern of land use and a spatial representation of land development policies, strategies and objectives of the province. Presumably this means provincial land uses and other spatial elements such as provincial roads. The content of the national SDF does not include any reference to spatial elements of land use and development. This is an example of the broad and ill-defined content of the Act which leads to uncertainty in planning practice.

## *Land Use Management*

If we accept that the term *spatial planning* means the creation of plans, policies and strategies to determine future urban land use, then *Land use Management* is the method or mechanism of achieving and implementing those strategic aims. The first may be called strategic planning while the second is an administrative function which may be thought of as operational planning. Land use management is the system by which land use and its development operates.

The criticism of town planning in the past is that it was simply the operation of zoning and that the method of zoning was a narrow and restrictive control of development. There are other means of managing urban development which include the provision of roads and public transport, the provision of infrastructure services, development incentives and financial concessions. These are all aspects which influence the built environment and play a part in determining the urban land use pattern. Land use is ineffective without roads and accessibility, and is limited without the provision of essential services of water, sewerage and electricity. As much as the land use of towns and cities result in a network of infrastructure, so too the availability and provision of infrastructure influences land use patterns and activities. The location of large shopping centres on major roads, of industry on railways and near airports is no accident. For many years the absence of water, sewerage and electrical services to the south of Johannesburg explains the relatively slow and late growth of these southern residential areas. It was understood and expected that land use management would be the integration of all these elements of spatial development and be the tools used to regulate the growth, densities and priorities of urban development. This would be the added dimension to the single method of land use regulation by the legal means of zoning.

The subject of land use management in Chapter 6 of the Act is devoted entirely and only to the land use scheme. In describing the requirements of a land use scheme in section 24 and its legal effect in section 26, the Act reinforces the system of zoning as the control of land use. However, it has increased its

previous scope by adding three new elements: incremental development; affordable housing; and development incentives. In the past, town planning scheme zoning was primarily a negative instrument which restricted land use. The new dimensions of the intended land use scheme are more positive in including matters that must be provided for. However, neither the Act nor its regulations provide any particulars of these new zoning elements and it does not explain how they are to be given effect in the zoning system. SPLUMA retains the zoning of land in categories of land use and attempts to add incremental development, affordable housing and development incentives as part of the method of land use regulation. However these are not land uses. The uncertainty is whether these three new elements should be included in a system of zoning or as a separately regulated development requirement.

#### *Incremental Development*

Incremental development is not a land use zone. It is a process by which township establishment can take place in stages – where the requirements of development approval can take place over a period of time after the township is legally established. This means that township erven can be registered, owned and occupied before roads are fully constructed or all essential services are installed. At present this is not generally accepted. Municipal Officials are reluctant to allow land to be transferred to beneficiaries before all facilities are made available. Why should a prospective home owner not be able to secure ownership and build a home without paved roads or an electricity supply which can be provided subsequently? This is a proposition very difficult for municipal officials to contemplate.

In the late 1990's an informal or squatter settlement had been established in the south of Johannesburg. This residential development was on land owned by the province which had initiated the process of land subdivision to formalize the settlement. The responsibility for housing was then given to the municipality and the land was transferred to the City of Johannesburg. The necessary process of rezoning and the subdivision of the land into smaller portions for each dwelling unit was then undertaken by the city council. The development required the

provision of water, sewerage and electricity services to each subdivided portion by the city council itself. The existing streets were gravel roads without stormwater reticulation. It was proposed, due to the costs and the council's limited finances, that the normal standards of fully surfaced roads and stormwater would be provided later, say two or three years after subdivided housing sites had been transferred to the disadvantaged beneficiaries. A priority target was to give land ownership to the community as soon as possible for good social and economic reasons. This would be a model example of incremental development.

In the process to create the housing sites, the proposed development was referred to the city council's own services agencies for comment and acceptance as they would provide the roads and other services. The council's road agency refused to agree to the development. It insisted that the roads and stormwater be constructed to full standard specifications at the start and before any land was transferred. The result was deadlock. Neither the council's housing department nor the council's planning officials were prepared to overrule the roads agency and to proceed with the development. More than 20 years later the new settlement had still not been established and the residents have no land ownership.

One of the arguments by the municipal roads agency was that without a full stormwater system there would be difficulties with drainage and erosion of the gravel roads. While this may be a consideration, it should not outweigh the importance of providing a permanent place of residence and secure tenure for the desperate residents. For many years until the 1930's a number of suburbs in what was then the White city of Johannesburg there was no waterborne sewerage. Until the mid 1950's there were gravel roads in White residential areas. Residential development with less than ideal standards of facilities is quite possible without unreasonable results. In the past this has allowed for urban growth and the provision of housing to take place without an ideal standard of services which could and were provided later. When, as now, the shortage of housing is such a critical issue there is a need to reconsider the

process of land development and this is certainly what is intended by incremental development. Yet little has been done to make this possible.

It is not just the provision of land for housing which is important. Ownership of the land is a significant aspect of urban development and in improving the lives of the disadvantaged. There is an interesting past parallel in the situation today of increasing urbanisation in South Africa. In the decade after Union in 1910, changing economic circumstances made traditional farming by individuals widely unsustainable. This applied particularly to the agricultural communities of the Transvaal who were losing their livelihood in rural areas. They were becoming the “poor whites” referred to in Chapter 1 and who had few if any skills for non-agricultural employment.

Farming people migrated to the larger towns and cities in search of survival but without adequate means to settle in the urban areas. This situation was the main reason for the creation of agricultural holdings in 1919 when the national government introduced legislation to address the problem<sup>7</sup>. This allowed the subdivision of land on the periphery of urban areas into small units (1 Morgen) without creating a township. The holdings included rudimentary gravel roads without stormwater drainage and no water, sewerage or electricity was provided. They depended on borehole water and septic tanks. The idea was that these sites would be near to fully developed urban areas to offer employment opportunities but would be large enough to allow the keeping of a few livestock and growing of some basic food. It was a considerably less expensive way of accommodating rural migrants to the city.

There are still today large numbers of Agricultural Holdings in Gauteng. Some of these have been converted into townships and others have become fully low density urban residential areas. The significance is that these holdings established urban living without complete infrastructure services but importantly, enabled land ownership with all its economic benefits.

<sup>7</sup> Agricultural Holdings (Transvaal) Registration Act, 22 of 1919.

A similar situation exists today. Since 1995 there has been a marked increase of rural migration to the cities, mainly in search of employment. This has resulted in squatter and informal settlements where land and home ownership is such a critical issue. There is a strong case to be made for transitional and incremental urban development as occurred with agricultural holdings although on a different scale and in form. No new solutions to such an important problem have been included in the supposedly new planning system.

### *Affordable Housing*

One of the mandatory requirements to be included in a land use scheme is the provision to *promote the inclusion of affordable housing in residential land development*. There is no definition of affordable housing which makes it difficult to envisage what is intended. Affordable housing is a concept or idea new to our urban planning and like a number of other features in the Act, introduces a new element to planning practice which is not commonly understood.

Affordable housing is said to mean the provision of houses or dwelling units for that sector of the population in which there is a housing shortage for those with limited financial means. It implies housing at a cost below what the market normally provides. The introduction of affordable housing as a requirement in the system of zoning means that the private sector development industry is expected to provide for its supply. This alters the nature of zoning from what one may or may not develop to something which one must develop and this means a radical change to planning practice.

The full extent and effect of introducing affordable housing as a requirement in land use schemes is yet to be seen. The Johannesburg Planning By-Law provides for affordable housing to be included in a land use scheme but the new land use scheme states no particulars of this requirement except to say that it must be provided in terms of policy. Is it right that a mandatory requirement is introduced in a guideline document and not in a statutory regulation? Other Gauteng municipalities have produced new land use schemes under the umbrella of SPLUMA but they do not contain requirements for affordable

housing despite the fact that the Act states that they must do so. Here again, we live with the uncertainty and vagueness in a new planning system. The liberal unexplained use of new terminology such as affordable housing, incentives and incremental development is somewhat like the fairy tale of the “emperor’s new clothes” – few understand the meaning but no one dare say anything.

Throughout discussions on subjects such as affordable housing, inclusionary development and land use management it was assumed that all those involved know what these terms mean but it has not been shown what they are in practice. Completely new planning requirements in land use schemes such as affordable housing being provided in private sector residential development needs clear definition if it is to be at all possible and workable in practice. The vague and uncertain provisions of SPLUMA do not shed much light on the subject. It may be the intention that each municipality would determine its own requirements for this new development responsibility but in Gauteng nothing has emerged except in one particular case. More recently, Johannesburg published a policy on what it called *inclusionary housing*. This appears to be a hybrid of the “inclusionary development” and “affordable housing” in the Act. This is not an intended provision in the town planning or land use scheme but a policy to be applied in the approval of a rezoning or township for residential development. Indeed, the municipality had applied the policy in rezoning approvals even before it had been approved by the City Council and it displays some alarming inadequacies.

In a discussion with planning officials it was stated that inclusionary housing actually means subsidised housing. This is the provision of housing at below the cost of production and means that private sector residential development is to carry the financial burden. As important as is the need to provide housing for those who cannot afford the cost of adequate accommodation, it is totally misguided to think that this can be made the responsibility of the private sector. Subsidised housing is a form of social welfare which is justified in the public interest because the provision of adequate shelter avoids social problems which affect all of society. Equally, the provision of public health services, safety and security and education are necessary social welfare which can only be provided

by the state. Social welfare is a function of government and it is financed by general taxation. Individuals, business and industry all contribute through general taxation to these social benefits and subsidised housing should be no different. Inclusionary housing policy in Johannesburg is an attempt to shift from a state responsibility to a private sector obligation.

In preparing its inclusionary housing policy the City issued a draft document for comment and consultation. The response, which was extensive and highly critical, was followed by a well attended consultation meeting by a large number of developers and professionals. Following this, the municipality prepared a summary of the comments by concerned parties which identified practically all the issues. However, there was absolutely no response to these critical concerns which the officials seem to have ignored. The Council proceeded to adopt the policy with only minor variations of the draft policy proposal. There are three alternative methods to the calculation of the inclusionary housing requirement but which is to be a minimum of 30% of the residential units in all cases. Also included is an additional option to negotiate an alternative provision at the discretion of the officials but with no indication of what this alternative might be. The policy in Johannesburg is nothing more than the subsidisation of residential accommodation for the economically disadvantaged by private sector developers. These housing developers need to sustain their business by earning a return on their investments. If they suffer a loss on the inclusionary units they will seek to recover this loss by increasing the price of the ordinary units. This will lead to increased housing costs for buyers and who, in effect, will pay the housing subsidy.

The inclusionary housing policy in Johannesburg has an added problem. It is discriminatory as it applies only to developers of residential buildings. The development of retail centres, commercial and industrial areas are excluded from these measures. But non-residential development generates employment and with employment comes the need for housing. Residential development itself does not create a need for housing: rather, it adds to the total housing stock and, by the cascade effect, reduces the overall demand for housing. It

has already been observed by some developers that if this inclusionary housing is made obligatory they will discontinue residential development in Johannesburg and move their business to other municipalities.

The Johannesburg inclusionary housing policy is that 30% of all new residential development must be subsidised housing units. An apartment building of say 100 units would then be 70 ordinary units and 30 subsidised dwellings. This will create social problems. 30 subsidised individuals or families will not be a cohesive community group. Communities are formed by larger groups of residents with common social and cultural interests. This is a spatial pattern of urban living which is world-wide and the inclusionary housing policy will frustrate this phenomenon. In addition, the policy will result in small, widely scattered social groups without any community identity.

Another dimension of the inclusionary housing policy is that it represents a tax. Inclusionary housing is not an essential requirement for residential development – it is a burden and imposition on an economic activity. It is argued that such a tax by a municipality is not authorised, that such a tax requires a *Money Bill* which can only be approved by Parliament. The Johannesburg municipality has already imposed inclusionary housing obligations on some developers and it remains to be seen if and when this will be contested. Housing of the poor and disadvantaged is a matter of social welfare which is a government responsibility in the general economic and public interest. It should therefore be financed by general taxation. What SPLUMA states, and what is contained in the national *White Paper on Local Government*, is that planning should identify areas for affordable housing to promote social inclusion. There is nothing to suggest that any form of subsidised housing should be provided in private sector developments and, even less, paid for by private enterprise.

The concern with social welfare in spatial planning practice is well justified but the motivation of the policy of inclusionary housing in Johannesburg lacks any analytical reasoning or factual data to support its proposals. Why a figure of 30%

is used is without any explanation. If the policy is generated by the SPLUMA references to affordable housing and inclusionary development then it confirms the view that the Act falls short of providing an adequate basis for the reform of planning practice.

### *Development Incentives*

The apparent intention in the notion of land use management is that planning practice should not be just the regulation or control of what development takes place but that it should facilitate development which is considered necessary or desirable. This is to make planning a positive and developmental exercise. It is to generate land use which would otherwise not occur in the normal operation of the land development market. For this, action or intervention by the planning authority is necessary and is a fundamental justification of planning. However, to be effective this intervention must be a positive stimulus of desired land use and not a negative influence in the land development market.

In urban planning there are two avenues in which municipalities can have a positive development influence. Urban infrastructure of roads and public transport, engineering and social services are not only essential elements of urban development, they are also the generators of growth and new land use. Accessibility and the availability of services attracts development whereas the absence of these facilities restricts urban growth. As an example, there is little doubt that the Gautrain rapid rail service has had an effect of promoting development around its stations. It has also been shown in a recent analysis that residential land values are higher in those areas where good quality schools are located and which attract residential development.

Urban infrastructure is provided primarily by municipalities and other government agencies. They therefore have the means to provide these services in areas where development is most preferred. While this may generally be understood, it seems not to be fully appreciated. In the 1960's and 1970's when the growth and expansion of Johannesburg was at a high level, the municipality was anxious to see the development of it's southern areas increased. This part

of the city had no sewerage network and very limited water supplies. While developers were willing to establish new townships in the south, the lack of these services prevented this from happening. The Council engineers asked the town planners to provide a development growth plan for the area so that the necessary infrastructure plans could be prepared and services provided in order to generate development. This was not possible. The practice then was that the construction of services by the municipality followed the development growth pattern - it was not a means to determine or influence the location and programme of new urban development.

It was not appreciated that if the municipality took the initiative of providing infrastructure it would create an incentive for development to follow. The difficulty of course is that such action would require expenditure and be without an immediate return. This is a deliberate planning decision which a municipality needs to take if it is to influence the direction and pattern of urban development. This is now better understood by the process of the integrated development planning system of the Act. Unfortunately, in the past 20 years the backlog of urban infrastructure in existing Black urban areas as a result of apartheid has strained the financial resources of municipalities to such a great extent that investment in new urban development has not been easily possible. It however must be appreciated in future that a municipality has to be a partner in urban development not just a regulating authority. Sadly, there is still a large body of municipal planners who have not yet been down this road to Damascus.

The second avenue of incentives is in providing financial benefits in selected parts of the urban area or where a particular land use is needed. This may be by allowing additional development rights, reduced assessment rates or a reduction of development charges.

The mechanism to influence urban development by incentives, is not entirely new and was included in the Johannesburg town planning scheme as early as 1970. A planning priority at that time was the improvement of central city traffic and solving problems of congestion. The traffic engineering solution was to widen the streets and construct additional traffic lanes. To do this required public

right-of-way servitudes over private properties in the CBD. As the municipality could not afford to expropriate the servitude land or to demolish existing buildings it offered a development incentive if land owners provided the road widening servitudes free of cost. The incentive was, that in return for the servitude the developer would be granted additional development rights at no cost and without rezoning. The problem with this is that the road widening would only occur when a property was ripe for development. It also meant that all the properties in any street would need to be redeveloped before the street could be widened along its full length. Despite the good intentions it was not appreciated that it would be many generations before all the properties in the city centre were redeveloped and the widening of roads could be achieved. This incentive met with little success and was subsequently discarded. Municipalities need to devise incentives which offer a real advantage to developers. What that may be has not yet appeared in the town planning schemes or, which SPLUMA states, must be included in new land uses schemes.

### *Need and Desirability*

It has been noted that almost the sole concern in town planning disputes has been the notion of need and desirability. Desirability in town planning is easy to define. It is the features of land use which create amenity, convenience, economy and efficiency in the urban environment. Need is an ill-defined criterion which has generally been misinterpreted.

The meaning of need in town planning has for long been misunderstood. This was largely a result of the approach adopted by the Transvaal Townships Board since the provincial ordinance of 1965. The Board tended to adopt a legalistic rather than a town planning approach to matters of urban development. Need was measured in terms of the market demand and financial viability of a proposed land use. It was a commercial or financial need rather than a planning need. This perspective by the Townships Board, perhaps influenced by land developers, led to development proposals being motivated and approved on the

basis of financial viability. Townships and rezoning applications for non-residential development were supported by ever more detailed and elaborate analyses and reports on the market demand of a proposed shopping centre or office park. Specialist studies would be undertaken to show that there was sufficient population and purchasing power to justify more shops in a defined area and that the need for the land use was proven.

The thinking, that if a land use could be shown to have a reasonably good prospect of commercial or financial success in a particular location, became the standard measure of need for that land use. This has totally ignored social needs or the needs of the community. This thinking still continues today. On this reasoning, shopping centres and office complexes have invaded residential areas where the communities affected did not need or want these developments. Need, from a proper town planning perspective, is the need of the community. If a community or district of the city does not have adequate convenient shopping facilities, employment areas in the form of office nodes or industrial areas or social facilities, then there is a need for these land uses. There is also another need which is justified in town planning. This is the need to change land use where the existing zoning and development is no longer sustainable or has become undesirable, for example by urban decay. The appropriate question in an urban planning context is whether a new or changed land use is necessary. Is it necessary for social or economic development reasons – not the reasons of commercial need or financial opportunity. This does not mean that market realities should be ignored but that commercial interests cannot be the overriding consideration to the exclusion of urban planning objectives of general welfare. This misplaced notion of need leads to considering other inadequacies of the planning system in the new legislation. SPLUMA does not use the term need in setting out the criteria for land use and its development. The planning criteria, which have already been discussed early in this chapter clearly indicate that the need is to achieve a different and better pattern of land use for general social and economic reasons. An illustration of this is in the case of an application for a petrol filling station considered under the DFA by the Gauteng Development Tribunal.

## Case 7

A new petrol filling station was proposed in the eastern inner residential suburbs of the Tshwane municipality. This was on a site surrounded by low density residential development of single dwelling houses. Local residents vigorously objected and the municipality was equally opposed to the application. In addition, several petrol companies with a number of established filling stations in the surrounding area joined the campaign against the proposal. The applicant had prepared a lengthy detailed analysis to show that the new filling station would be financially viable and therefore, it was argued that this demonstrated a need for the facility. The submissions by the competing petrol companies also included analytical reports to show that there was insufficient market demand for an additional filling station and that their own commercial viability would be endangered. For this reason alone it was argued that no need could be proven. The development tribunal refused the application. Included in its reasons, the tribunal held the view that the relevant need was that of the community and its motorists and not that of a petrol company. There were already a number of filling stations within a convenient distance and the area was well served for this purpose. This, it is suggested, is the correct town planning interpretation.

The situation in which the provisions of SPLUMA are incomplete and leave much to be determined by either provincial legislation or municipal by-laws, creates two problems. The first problem is the potential for conflict or divergence between the national legislation and municipal by-laws. Despite the planning principals and development criteria in SPLUMA; those of the Johannesburg by-law are quite different. In clause 5 of the Johannesburg Municipal Planning by-law 2016 are two central planning criteria:

- (3) *any land development application..... must address need, reasonableness, desirability and public interest.*

In practice this creates the danger that the misguided interpretation of “need” will continue to be argued in future.

- (4) *Any land development application ..... shall have as its main purpose the co-ordination and harmonious development of the area to which the application relates in such a way as will most effectively tend to promote the health, safety, good order, amenity, convenience and general welfare of such specific area as well as efficiency and economy in the process of such development.*

This is almost a verbatim repeat of the Transvaal Ordinance purpose of a planning scheme. If the Ordinance failed to produce more functional, efficient and effective urban development, can the City's by-law be expected to do any better.

The second problem is that of the uniformity and simplicity of planning practice across the country. The prospect is that many of the several hundred municipalities, and certainly the cities, will have different planning by-laws. This creates an administrative nightmare. Already, land developers and their consulting town planners are faced with different requirements and procedures in each municipality. The offices of the Surveyor General and the Registrars of Deeds will have a multitude of different requirements and procedures for townships, land subdivision and for land registration. Instead of uniformity the result is inconsistency.

The practical results of SPLUMA are already plain to see. It has introduced some new terminology to urban planning but with no meaningful results. It has created some broad new requirements in planning practice but omitted any substantial reform of the planning process. The Act's inadequacies have been relegated to municipal by-laws which have done nothing to make urban planning practice more effective but, on the contrary, have eliminated any uniform planning practice across the country.

The underlying difficulty is probably the term *municipal planning* in the Constitution. Far too often this is equated with and limited to mean urban or land

use planning. When the Constitutional court set aside the operation of the development Tribunals of the DFA it simply confirmed that township establishment and zoning were subjects of municipal planning. The Court did not unfortunately give municipal planning a wider meaning. As a result there is a continued belief that anything related to urban land use and development is exclusively in the hands of the municipality. This cannot be true - it is too simple an interpretation of the complexity of urban development. This lack of clarity is evident in the new national planning legislation and which its authors failed to properly appreciate. SPLUMA recognizes that national and provincial government functions have a place in urban planning and provides for the co-ordination and integration of national, provincial and municipal plans in Chapter 3 – but it gives no procedure as to how this should take place.

The uncertainty surrounding the integration of planning and the scope of municipal planning was highlighted in another Constitutional Court case<sup>7</sup> This concerned the authority of the Minister of Agriculture and Land Affairs to decide on the subdivision of agricultural land, irrespective of whether it was in a municipal area and therefore fell within the ambit of municipal planning. The Court held that control over the use and subdivision of agricultural land by the Minister was valid and constitutional – it was not an appropriate subject of municipal planning. What is of interest is that the High Court reached the same conclusion but the Supreme Court of Appeal revised that decision. Also of note is that in the Constitutional Court there was a dissenting view by three of the judges.

<sup>7</sup>Wary Holdings (Pty) Ltd vs Stalwo (Pty) Ltd and others

This illustrates different interpretations of the meaning of *municipal planning*. Although the subdivision of land, like township development and zonings, appears fairly obviously to be a matter of *municipal planning* the Court rightly observed that agricultural land is of national importance. The subdivision of agricultural land may adversely affect national food production capacity. This regulation of agricultural land should recognise the need for national policy and as the Court noted, the need “for consistency in agricultural policy throughout the country”. Because all agricultural land now is within an area of municipal jurisdiction, its subdivision cannot be simply categorized as a matter of municipal planning and exclusively in the hands of a municipality. Similar situations apply to numerous national and provincial government functions. In writings on these subjects it has been observed that there is hardly any activity which is not reflected in the use of land. When this occurs, planning or development approval is necessary by both the municipal and other spheres of government.

The above leads to a practical inadequacy in the new legislation and in urban planning practice and is the matter of the integration of spatial planning. SPLUMA only pays lip service to the concept, and as already shown, in practice, the municipal SDF fails to incorporate the planning objectives of national and provincial government. One particular example in Gauteng is the function of the Department of Agriculture, Environment and Housing which affects urban areas.

Another failing of SPLUMA is that it leaves so much of planning practice to be determined by municipal planning by-laws. This means that potentially each of more than 200 municipalities in the country will have different planning by-laws and a vast number of different planning systems. This is a recipe for complexity in planning practice and a complete failure to achieve the goal of uniformity which, in the preamble to SPLUMA, is stated to be a necessity.

## OUTCOME

It should be expected that after more than 20 years since the urgent need for a radical new system of urban planning and development was considered imperative, planning practice would by now be extensively reformed. Such reform was dependent on a new framework of legislation which was what SPLUMA was intended to achieve. This new Act only arrived after 18 years of it being proposed and it then required municipalities to complete the process by creating planning by-laws and introducing land use schemes. In some municipalities local planning by-laws have been established but no land use schemes have been brought into operation. In others there is a new land use scheme but no by-laws. There is still some way to go before planning practice can be changed across the country. Not surprisingly, the most progress appears to have been made by the metropolitan municipalities but this has not had any significant effect on the way in which urban planning operates.

To consider whether the operation of urban planning has been reformed needs an examination of the key aspects of the system which should be changed. This requires a clear understanding of what is to be achieved in practice. To start, a far more well defined objective is necessary. The theorists who have argued most strongly for a new system of planning have as their main concern the aim of social welfare and the elimination of historically enforced disadvantage. The criticism is that planners have been and still are preoccupied only with technical matters of physical land use to the exclusion of social concerns such as adequate housing, employment, health and economic opportunity. Planners

who are practically involved in urban development argue that development policies and the regulation of land use require to be overhauled to create more effective land use patterns while the priority of the land development industry is for far greater administrative efficiency.

The divergence in perspectives of what the main purpose and scope of planning is or should be is an obstacle to improving planning practice and SPLUMA has not added much light on the subject. It is accepted that an underlying value in spatial planning is social welfare in a general sense. Traditionally, this means plans which include the identification of land for housing, education, health services, employment and other social services for all communities equally, with particular attention to disadvantaged areas. However, the actual provision of houses, hospitals, schools and other necessary facilities on urban land is a function of government departments and private sector organisations which provide those facilities; not municipalities. Neither municipal planning nor its land use management is responsible for providing these facilities. If the development principle of “social justice” in SPLUMA means the equitable provision of social and other services, the Act lacks any indication of how spatial plans or land use schemes are to make this a reality.

If planning practice is to be responsible for the goals of general welfare then it needs to go beyond the determination of future land use. It would need to become the means for developing facilities by constructing hospitals, schools and of supplying social services. These facilities are the functions and responsibility of national and provincial government and cannot be created in municipal planning. In carrying out municipal planning, municipalities can and should plan for these purposes by identifying the land required but, without the necessary mandate and finance, they cannot ensure that these needs are provided for. Neither do municipalities have the authority to designate and acquire land for hospitals, schools and other government services. They can only indicate the land requirements for these purposes in their spatial plans. Acquisition of the land and its development for social purposes is then a responsibility of other spheres government.

The provision of schools is a particular example which has often been cited as a shortcoming in the urban planning system. Residential land development applications for new townships and increased density are approved without any consideration of how and where sites for schools are to be provided. The result is that extensive communities have been created without land being set aside for the schools which will be needed. This is not comprehensive or integrated planning. Developers and their planners do not deny the need for school sites but argue that if these are required then the education authority should identify and acquire the land for which the land owner will be paid compensation. The role of the education department in this process and this social need has been neglected. So it is that planning fails the intention of social welfare in urban development. It can be argued that Chapter 4 of SPLUMA provides for the coordination of municipal land use planning with the functions of both provincial and central government. It deals extensively with integrating the many aspects of planning and development and that national, provincial, regional and municipal spatial development frameworks must be complementary. What the Act does not do however, is to set out how this should be done in practice. Until now, at least in Gauteng, municipal spatial planning does not even indicate the future need for schools and their possible spatial location.

A more comprehensive system of planning which meets the objective of more than just the distribution of land use requires a major change to the form and content of spatial plans. It also requires a reconsideration of the operational interrelationships between national, provincial and municipal government. While the seeds of this are in the broad value statements in SPLUMA, the Act goes no further than to provide for spatial plans of land use and a method for its regulation by an unchanged system of zoning. The criticism is that planning practice in the past has neglected social needs and objectives which were not being addressed. This is possibly because those who have most strongly argued that planning should be predominantly concerned with matters of social wellbeing and not just confined to the technicalities of land use, have not stated what this means in practice. It entails a new and different idea of what is meant by planning and its scope of operation. The implication is that current spatial planning as just the arrangement of land use patterns and the design of the built

physical environment, should also include the delivery of social needs. This would require a completely new understanding of the meaning of planning – most specifically urban planning. This understanding is elusive.

Neither the Constitution nor SPLUMA provide much guidance on the subject. The Constitution refers to *municipal planning* but does not define what this means or what it includes. It does not include education, health services or housing as these are national and provincial functions. In SPLUMA the general description of spatial development frameworks and in its description of their content, the subject of planning repeatedly refers to the spatial arrangement of land use, services infrastructure and matters of the physical environment. It does not include or refer to social improvement or eliminating social disadvantage. The one exception is that a municipal SDF must include the identification of areas where national or provincial housing policy may be applicable. This is the planning of a land use but is not the actual provision of any such housing. So, the proposedly new system of planning does not in effect provide for social welfare.

For urban planning to be the means to provide better living circumstances for all and in particular for disadvantaged communities, it will require two major changes. Firstly, there needs to be a proper definition of the scope of urban planning – what activities it includes, what results it is to bring about and how and by whom this is to be achieved. Secondly, it needs land use to be integrated with social and other services which are the responsibility of national and provincial government. The history of town planning in Britain provides an interesting perspective.

Following its origins as a movement of reform for social improvement, urban planning then became a process only for creating a better physical living environment. The four disciplines involved each had a different emphasis on what this meant. Architects considered that the primary objective was to create a more pleasant and attractive built environment. For them, urban planning was about civic (or urban) design: the creation of public space and aesthetically attractive buildings. Engineers saw the main aim as designing and providing

necessary and effective infrastructure services of waste disposal, potable water, electricity and transport. This would provide satisfactory living and working conditions as the primary objective. Land surveyors considered that the efficient and economic subdivision of land for development and for roads was the all-important requirement. Finally, the legal practitioners held the view that planning meant the regulation of land use to avoid nuisance and to protect community and state interests. The emergence of town planning as a distinctly separate discipline attempted to combine and coordinate all these aims and to manage urban development for an optimal and balanced functioning of space for living, working and leisure. Planning practice was, and still is, primarily concerned with land use. While this was in a context of ensuring the welfare of society in a general sense, the planning and more particularly the provision of social and economic welfare are activities of other spheres of government responsible for health, housing, education and employment. It is true, in the wider sense of economic and social planning, that all these activities are to be integrated within government as a whole. However, urban planning as undertaken by municipalities is not and almost certainly cannot be responsible for producing all these goals. The problem we face is to define the limits of urban planning as a distinct activity of municipalities and then to create the system to carry it out.

That social and economic development is a consequence of and only possible by urbanisation is not disputed and in this process four essential requirements can be identified. They are housing, health, education and employment. These are needs which must be met in urban development and, to avoid discrimination and resulting inadequacies, must be equally accessible to all. Where the market economy cannot and does not supply these necessities it is the purpose of government to provide for these essential needs. Only in this way can disadvantage be eliminated and development potential be achieved. In South Africa a proportion of health care is provided by private sector hospitals and medical aid schemes without government finance. Large parts of education are provided by the private sector and even state schooling in more advantaged areas is, in part, privately financed by school fees. Housing for those of adequate financial means is provided by the residential development industry. In the case of the financially disadvantaged this can only be provided by the

state. Employment is provided by both private enterprise and the state and is dependent on economic growth. In these ways a significant proportion of general welfare is provided and financed by the private sector. The state or government responsibilities of subsidising the poor cannot be the subject of municipal planning or the planning envisaged in SPLUMA. The conclusion is that spatial planning including urban planning, is concerned with land use. This can identify the space and location of social needs but cannot itself provide these necessities.

Urban planning, as in the subject of these essays, is the planning and management of the physical development of towns and cities. It is not the means for providing social support in the form of social grants, child support programs, housing subsidies, employment, health care and education. It is concerned with the pattern and physical quality of urban space and the distribution of activities. Urban planning is therefore, a process of determining the location and nature of land use and buildings and gives the term spatial planning its meaning. This is clearly reflected in the provisions of SPLUMA which relate to the municipal sphere of government. These provisions all concern the use and development of land and particularly that of urban land. The Act does not incorporate measures for social and economic goals to be achieved except to imply that land use planning should accommodate the achievement of these goals which are contained in other legislation. The subject matter of urban planning, as in the past and elsewhere in the world, remains unchanged. The difference now in South Africa is in the criteria and the methods to be used in determining the use of land and its development. How then is the practice of urban planning in this country to be changed?

## INFRASTRUCTURE

During the periods of evolution and transition described in Chapters 2 and 3, the provision of transportation and of engineering services were increasingly understood to be significant aspects of urban development planning. Land use as the spatial arrangement of work, leisure and living activities requires the movement of people and goods and the supply of utilities to make the urban area operate effectively. This should be self-evident but the planning system did not adequately manage to coordinate these three elements of the built environment.

### *Engineering Services*

Engineering services are the utilities which are essential components of urban development. They are the provision of water, sewerage, roads and electricity to all newly created urban areas or to the increase in existing urban development. In the past, and to a large extent still today, the planning, construction and provision of services tended to be generated by and to follow the approval of new land use development. It was not planned and programmed ahead in order to facilitate urban growth. Municipalities were forced to respond to urban development trends created mostly by private enterprise rather than directing development by the advance planning of services to suit their spatial plans. The lack or inadequacy of spatial planning forced municipalities to be reactive to development pressures of the market instead of proactively managing the urban growth pattern to achieve their own development objectives. This is an absence of the integrated planning intended in the Systems Act and in SPLUMA. There is perhaps the excuse that since

democracy, attending to the backlog of services to disadvantaged areas and the proliferation of informal settlements has made the comprehensive planning of engineering services a secondary priority. Even then, the necessity to integrate the planning of services and land use has not been given adequate attention.

Spatial planning in SDFs, which are often lengthy but frequently lacking in adequate clarity, has introduced the aims of concentrating development in defined nodes, residential densification and other urban growth strategies. But, having identified desired future land use patterns, these are then simply stated to be dependent on the availability of services at some unknown date in the future. Development is a function of both time and space and without a time programme, planning has little meaning. An added difficulty in the planning and provision of engineering services has been some idealistic land use strategies. Earlier development frameworks in Johannesburg for example provided for a general residential density increase to 10 dwelling units per hectare. This has since been increased to 20 dwelling units per hectare. These policies do not contain any calculation of the total number of future housing units that would result or how long their development would take so that the availability and need for engineering services could not be determined. This led to the frustration of municipal engineers and of housing developers. This is illustrated in two Johannesburg examples.

Bryanston is one of the most extensive residential suburbs in Johannesburg. It has more than 5 000 residential erven, each in the order of 4000 square metres in area. An increase in density to 10 dwelling units per hectare implied the existing 5 000 thousand dwelling units increasing to 20 000 thousand units. In Bryanston the market was ready for this change but, within a very short period, applications for increased density could not be accommodated because there were inadequate electricity supplies. In other low density residential areas a somewhat different situation prevailed. In suburbs developed with large high value houses these cannot practically or economically be replaced by higher density development. These properties are not likely be available for new

development for one or two generations in the future. The policy for these suburbs to significantly increase in density in the foreseeable future is unrealistic. They will thus not require any increase in the provision of services and therefore, the need to supply additional services in these parts of the city will not occur for some considerable time. If there is any planning to provide engineering services for the proposed densities in these suburbs it is likely to be a wasted exercise and divert attention from those areas where the need for services is a greater development priority. It is becoming more frequent that spatial planning policies, such as that referred to for Bryanston, and intended development in response to demand are frustrated because services are not available. The result is that development strategies become impractical and meaningless and needed urban growth is thwarted. While it is true that municipal finances are not unlimited, land use development strategies have failed to be integrated with budgetary resources.

There is another aspect of essential services which has been overlooked. This is that the planning and provision of infrastructure services can be used as a tool to manage and regulate land use. Urban land use growth can be regulated by the simple strategy of not providing these services to areas where urban development should be limited in order to avoid urban sprawl. Both the provincial government in Gauteng and the municipalities have devised elaborate policy plans to define the urban edge beyond which development should not take place. These plans would not be necessary if the areas to be kept free of urban expansion were simply excluded from plans for providing urban infrastructure services.

It is true that the municipal IDP together with the municipal budget have detailed plans for infrastructure development but these are not reflected in or used to determine land use development strategies and programmes. The very principle of integrated planning is being lost.

#### *Roads and Transportation*

The accessibility of people, goods and services is a fundamental necessity of land use activity. It is self-evident that without movement between homes, places of employment, zones of production and consumption and social

services, land uses become sterile. Accessibility is dependent on transportation of one form or another and the greater the availability of transport the more accessible urban activities become. This leads to increased economic activity and opportunity. The absence or limitation of transportation restricts opportunity which in South Africa is most evident in areas of historically disadvantaged communities which, for economic reasons were almost totally reliant on public transport. Their dependency on public transport has been that much greater because their residential areas are remote from urban centres. To a notable extent in some American cities the poorer classes, most often so-called African Americans, suffered the same disadvantage. They had limited access to employment and education opportunities as public transport was very limited. This lack of accessibility and resultant unemployment it was said, was a major cause of dissatisfaction which led to the racial riots in Watts, Los Angeles in the 1960's. At the time, a news reporter when he asked one of the rioters what the complaint was with public transport he was apparently told:

*"It is where you aint and it takes you where you don't wanna be"*

In South Africa it can be said that transportation, both private and public, has been good for the privileged classes but inadequate for the poorer classes. This was true until the 1960's when circumstances began to change and then changed more extensively in the 1980's. In the 1960's there was the start of a noticeable increase in private car ownership in White communities. The same time saw a decrease in the availability of public transport in White residential areas. In Johannesburg the municipal bus service was continuously reduced as passenger demand decreased. This first affected the more popular bus routes because, it was said, the municipal transport department was operating at a loss and therefore the most used routes were responsible for the greater part of the financial deficit. This pattern continued until more recently when changing circumstances created a different attitude to the need and importance of urban public transport. Throughout the 1970's and 1980's attention to the need for transportation was heavily focused on movement by private motor car and the private movement of goods and services. This meant traffic planning for roads at the expense of transportation planning of public transport. The romance with roads and particularly freeways was noted in Chapter 2 and the preoccupation

with road planning by many traffic engineers has continued even until today. Here it is interesting and perhaps useful to consider some overseas experience.

In Britain in 1963 a report was prepared for the national government on urban traffic and the planning of roads. It was commissioned as a result of the growing concern with road traffic problems caused by the exponential increase in motor vehicle ownership after World War II. The title of the report was "Traffic in Towns" and it became known as the *Buchanan Report* after its main author Colin Buchanan, (later Sir Colin Buchanan). The report was concerned with roads in urban areas but also with the importance of maintaining a high quality urban environment. It saw road traffic as a means toward an end - urban economic activity rather than the simple goal of maximizing road traffic movement.

*Traffic in Towns* was based on some predictions and assumptions which are now somewhat inaccurate. It assumed that the then rate of population increase would continue for the next generation and that motor vehicle ownership would continue to increase to American proportions. These predictions were not entirely accurate. The total population of Britain was projected 40 years ahead to reach 74 million by the year 2010 but today in 2019, the actual number is about 59 million. Motor car ownership for the same period was projected to increase from 1 car for every 10 persons to 4 cars for every 10 persons. Today in Britain there are 5,3 private cars per 10 persons.

With this data in mind, the report suggested that radical measures would be necessary to maintain accessibility and keep urban road traffic moving. While it recognised that increased use of public transport would be necessary, the report concentrated on solutions to traffic and movement in a variety of conceptual road plans. It placed a strong emphasis on the construction of motorways in or around urban areas or at least multiple lane divided arterial roads. Suggestions were put forward for different urban areas such as historic towns, metropolitan centres and smaller regional urban centres although it was recognised that implementing such plans would be very costly in both construction and land

acquisition. A visit to Britain today reveals that very little of these grand designs has become a reality. Most probably the cost was found to be unrealistic and the likely outrage by citizen groups to the environmental impact of major road construction probably put an end to most of these road proposals. On the other hand, regional and inter-urban roads, which were not the subject of the report, in the past 50 years in Britain have been greatly improved, while urban roads are very little changed. The most noticeable feature of the *Traffic in Towns* report is the absence of any discussion of the alternative strategy of minimal or no improvement to the road network – it was assumed that it was necessary to provide more urban roads for private motor cars and increased traffic.

The current situation in South Africa is significantly different. Presently, the total number of private motor cars is 7,3 million in a population of almost 57 million. This means 1,3 cars per 10 persons compared to the 5,3 cars in Britain. However, it has been shown that the number of car trips per person in Britain has declined slightly in recent years. The indications are that while the frequency of urban car trips has declined, inter-urban trips have increased more noticeably for purposes of tourism and recreation. It appears that the level of commuting to work by private car in Britain has stabilised for some time. Certainly in London and also other major cities, it has reached a saturation level.

Some 30 to 40 years ago it was said that the maximum commuting time to work was one hour or a little more. This is still generally true in British cities even though, for example, employment in central London has increased significantly in recent years. A large number of commuters to London are now spread further from the centre but the general travel time limit of the majority has remained at little more than one hour. As commuting times by private car increase so the need and demand for public transport grows. For this reason, both in Britain and Western Europe, extensive public transport in the form of regional railways, buses and underground railways in mayor cities have been well developed. The Buchanan report also noted that in Germany the street tram system was maintained and developed to great advantage. The suggestion is that creating more roads in urban areas is neither essential nor is it practical.

In England it is now possible to commute on a daily basis to London from places as far as Southampton, Portsmouth and Brighton in hardly more than one hour by fast regional trains. These are distances of up to 100 kilometers. With one exception, the differences in South Africa are stark. Our cities do not have fast regional train systems, the bus network has been limited and there are no underground rail services. The one exception is the Gautrain which is particularly fast and is regional, although limited in its extent. Apart from its very convenient service to the O R Tambo international airport and between Johannesburg and Pretoria; it provides the major function as a commuter route between both cities. In these cities however, the dominant means of commuting in the more affluent areas is the private motor car and for the less advantaged areas the minibus taxi. Both of these forms of transport require large amounts of road capacity. Today, in Johannesburg a most dominant zone of private commuting is in the northern suburbs of the city. This is to the major nodes of employment such as Sandton, Rosebank and other centres. These northern residential areas generally extend no more than 15 kilometres from the Sandton CBD, 20 kilometres from Rosebank and about 30 kilometres from the Johannesburg CBD and have minimal public transport facilities. The northern area residents who live beyond the outer ring motorway (N1 National Road) confirm that the daily commuting time to work in the peak period is more than one and a half and up to two hours. – almost twice as long as for London commuters and over only a fraction of the distance.

In Chapter 2 the grand freeway plans of Johannesburg and the then Transvaal provincial government were noted. The city Council's plan was to create a regular grid of urban motorways and major arterial roads across the municipal area. This meant cutting through built up areas, residential suburbs and destroying large areas of open space. When the plan was made public there was a outcry. These proposed roads were seen as a destruction of the urban fabric. Of equal or greater concern by those whose properties were affected

was that such a large scale road network could only be constructed over a long period. This meant that a vast number of property owners would live under the threat of expropriation for an undetermined number of years creating havoc with their land values and effectively freezing their ability to sell their properties. One citizen who was affected then threatened to take the city council to Court and have the plan set aside as an infringement of his property rights. Very soon thereafter the municipality abandoned the plan.

Five years later the provincial roads department developed its freeway plan for the area which is now Gauteng. The same concept was applied with a grid of freeways and arterial roads. Because provincial roads are mainly to connect towns and cities rather than to provide routes through the urban areas, many of the planned roads were in areas not yet developed and the plans enjoyed considerable success. There were however many of the routes in built up urban areas which have been a development problem for the last 40 years or more. The plan still exists and numerous routes have been constructed to the great advantage of regional travel. There are however many of the planned roads in the urban areas which would be so expensive and disruptive that they are not likely ever to be built. This is not unlike the experience in Britain. It should now be time for provincial road plans to be consigned to the refuse bin. To continue these plans creates a friction with municipal land use planning and can be said in many ways to frustrate the introduction of public transport.

It is reasonably certain that private motor car ownership in South Africa of 1,3 cars per 10 persons will increase substantially in the years ahead. Whether this will reach the level of 5 cars as in Britain is difficult to contemplate but it could easily be expected to reach a level of say 2,5 cars per 10 persons within the next generation. We would then be facing double the number of cars compared to today. As in Britain, it is most likely that the number and capacity of urban roads will not be proportionally increased. This situation has not been properly considered in urban planning and there remain contradictions in practice. In cases where development proposals affect provincial roads in urban areas, the provincial roads department insists that the developer must provide the road improvements to accommodate the additional traffic which will result. A major

effect of this is predominantly to facilitate the use of private transport. Which could be counter productive.

Municipalities have tended to adopt a similar approach. However, in a particular development application for an increase in residential density in Johannesburg, the municipal roads authority adopted an unusually different attitude. This case was strongly opposed by local residents who objected on the grounds of increased traffic. The Council's roads agency supported the application without requiring any road improvements. The solution, it was said, was public transport which would become feasible when the roads became clogged up with motor cars. This indicated a deliberate strategy to use land use to influence transportation rather than the opposite.

If an extensive new network of arterial urban roads like that planned for Johannesburg in the 1970's is not possible or even desirable it means, as has been recognised, that more and better public transport will be essential. It also means that the pattern of urban land use and particularly its densities will have to change. Although this has been recognised in the spatial plans of municipalities where the aim of increasing public transport is promoted, the policy strategies do not clearly address these issues. The problem is that most of these development policy plans do not include adequate statistical analysis. The aim to increase the intensity of nodal development does not measure the effects on traffic movement and accessibility. If the general commuting limit of only 20 kilometers to Sandton CBD is already more than one and a half hours travel time is there not an argument to limit the growth of this node and allow the establishment of new nodes? This is not in the current policy thinking.

In Johannesburg, as the largest city in South Africa, and in Gauteng, which is practically a city region, the urban area is beginning to experience the characteristics of large cities elsewhere in the world. With democracy, more and more of the previously disadvantaged have been drawn into the mainstream economy of formal employment and business enterprise. For this, accessibility became crucial and in response private enterprise reacted. In the 1970's there emerged the minibus taxi industry. This was a new kind of public transport but

not public in operation or in ownership. It was flexible; it connected trip origins and destinations and provided a far more effective system than the state controlled rail and bus networks. Initially this created new traffic problems and a threat to the failing government operated rail and bus transport. One of the difficulties with this new minibus transport system was the control of traffic and the inadequate destination points for off-loading passengers. In particular the licensing of minibus operators was an administrative problem. Added to this new road traffic was the problem of irresponsible if not illegal driving habits of the minibus drivers. In reaction, a report was prepared which proposed no less, that minibus operations be totally eliminated by law. This was a recommendation of the Welgemoed report which showed quite obviously that the authors did not understand the economic and practical issues involved. Private enterprise had responded to a social and economic reality which government was unable to resolve. Fortunately, the drastic and authoritarian measures proposed to get rid of minibus taxis never materialised. It is practically impossible to imagine that South African towns and cities would function today without this form of transport.

The trend to be observed is that private car commuter travel in the major metropolitan cities is approaching some limits. The possibility of improved and additional road space to accommodate urban population growth using private car transport is becoming limited. Is this the scenario of *Traffic in towns* in Britain in the 1960's? Perhaps we can learn from that experience. More and significant public transport will be necessary. Municipal planning departments have begun to realise this and that it implies increased residential density is needed in parallel. But not yet have we seen spatial planning adequately analyse and correlate these two aspects of future urban development.

## SPATIAL PLANNING

Although it is the instrument for the planning of future land use, neither the Systems Act nor SPLUMA specifically state the purpose of a Municipal Spatial Development Framework (MSDF). From the descriptions of their content and status however, a broad sense of their intended purpose can be inferred. In the Systems Act a SDF is a component of the municipality's Integrated Development Plan and is to contain *basic guidelines for land use management*. The SDF is thus concerned with the physical pattern of land use which both determines and results from the distribution of urban activities. It is to guide the development of the built environment in order to reflect the socio-economic and built environment objectives for the municipal area. What the contents of the SDF are to be, are not stated.

In SPLUMA however, the content of what is to be included in a MSDF is set out in some detail. In addition to stating particulars of context and required data, the essence of the MSDF is to be the identification of the current and future land use pattern, areas for housing and for incremental upgrading of development. The focus is clearly on the determination of land use. It is also notable that the SDF is to include three important, if not vital aspects of spatial planning. These are the identification of the location requirements for infrastructure, a spatial depiction of an expenditure framework for the municipality's development programmes and an implementation plan. These three requirements are essential if any plan to influence the spatial pattern of an urban area is to be meaningful.

What can be seen throughout the description of the MSDF in SPLUMA is the emphasis on what the municipality must do to achieve development goals and the restructuring of its urban area. It requires the municipality to plan and provide infrastructure and services, to set budgets and programs and to actively implement its development objectives. It cannot be just a regulatory authority. In the past and until now, the majority of SDFs have fallen short of producing this result. They have not contained any adequate analysis of statistical data, a programme and budget for infrastructure or the provision of social services. Although these needs are, to a greater or lesser extent, addressed in the IDP, there has been a disconnect in the physical development plan of the SDF. Examples are in the earlier residential density and nodal development proposals in Johannesburg. Very low density residential areas were to be increased by up to five times their existing intensity of development but when the market responded with land development applications the City had not planned for and could not provide electricity. Development nodes similarly could not be provided with the necessary additional sewerage. Understandably the City's financial resources were strained by the infrastructure expenditure backlog in disadvantaged areas after years of neglect. However, this lack in the integration of infrastructure with land use often makes the SDF unrealistic and impractical.

Part of the difficulty with these future development plans is that they were mainly formulated and used only for regulating private sector land development. After so many years of planning being just the narrow control of development, municipal planners could not shake off the legacy of confining their efforts to controlling and restricting land use. Planning remained a reaction to the land development market rather than a catalyst for reform. The SDF was seen and applied as the blueprint for making decisions on land development applications and this has had an unintended result. The land use plans in the SDF indicated different future land uses with exact cadastral boundaries and subject to detailed criteria. These were then strictly applied to development proposals so that the SDF became a form of zoning. The provisions of the SDP were regarded as being inflexible as if they were a statutory regulation. In effect, this was a second layer of zoning over the town planning scheme. Instead of planning becoming

a normative system it was even more like the regulatory system which has been so heavily criticised. The form of these SDF land use plans indicates precisely defined areas and boundaries for different land uses. In a large urban centre with a population of a million or more inhabitants it is impossible to calculate future land use needs in exact detail or to determine economic growth with any degree of accuracy. It is therefore not possible to plan a future land use pattern in precise detail. It is also unrealistic for municipal planners to analyse the features of hundreds of thousands of individual properties to determine with absolute certainty what development should take place in the future. Every property has its unique features of locality, topography and relationship to its surrounding development so that to predetermine exact future land use zones is an exercise in futility. This has been demonstrated time and again when the refusal of a land development application has been shown to be unreasonably determined by a mechanical application of simplistic SDF criteria.

A future land use plan such as a SDF can only indicate growth and future development of the urban area in broad and general terms. This is particularly true when circumstances are constantly changing. As its title suggests, a SDF should be a framework – a guide for decisions on land use development which is continually taking place. A SDF needs to be used with flexibility to accommodate constant change. This approach is well summarised in a quotation which is relevant to planning:

*“Have faith in human creativity and change: movement and change are life: and the only heresy is finality”<sup>8</sup>*

SPLUMA makes the purpose and use of the SDF somewhat clearer than the Systems Act where it describes the content of a MSDF in section 21 (d) as *identifying current and future significant structuring and restructuring elements of the spatial form of the municipality where public and private investments will be prioritized and facilitated*. Municipal planners are beginning to better understand this. In some more recent SDF plans, proposed land use is shown

<sup>8</sup>G Stevens in *The Psychology of the Christian Soul*

and described more appropriately. Different areas of development are more generally defined and are illustrated diagrammatically. An example of this is in the recent review of the nodal development policy for Johannesburg. The content of this plan has been criticised by some planners but there will always be differences of opinion. What is important is that this plan sets out a general strategy concept without attempting to define detailed land use and precise boundaries. This allows for interpretation according to location and circumstances. Only in this way can the SDF be a guideline as intended and avoid being an inflexible prescription. It requires that municipal planners change the way in which the SDF is used as a means of giving direction to future development.

Until now municipalities have treated the SDF and policy plans as a form of planning regulation to be applied without discretion as if they were a statutory enactment. Even when an official or the planning tribunal supported a land development proposal on the merits of its circumstances or location but which was not exactly according to the policy, the application could not be approved without the SDF first being amended by the municipal council. This would be a lengthy and frustrating process. An illustration is a case where a major road along which mixed land use and more intense development was promoted. The rezoning of such a site was applied for but could not be approved because the intended development was considered to be a land use only to be located in a development node. In this case the identified development node boundary was on the other side of the road. For any approval it was necessary for the council to amend the nodal boundary before the application could be approved.

This example shows that not only is there still a lack of understanding of the difference between zoning and planning but also that the very necessary change to the system of land use planning has not been achieved.

Section 21 of SPLUMA also provides that a Municipal Spatial Development Framework (MSDF) should identify areas where more detailed local plans should be prepared. In the past, such local plans have been produced as an extension of the MSDF for specific areas or development subjects in the

municipal area. These have been referred to as precinct or policy plans but have created some difficulties. They have attempted to define development and design details which approximate a kind of zoning which is exactly what should be avoided. Two examples demonstrate the problem. Outside of the Johannesburg CBD the two most important and largest development nodes are Sandton and Rosebank. Indeed, the Sandton node is now the business centre of the city, it is the new CBD and the traditional city centre of downtown Johannesburg has become a centre of government administration and increasing central city residential development. It can be said that Johannesburg now has two CBDs. This is not unusual. New York and London each have three CBD areas. What is unusual is that the old Johannesburg CBD and the new Sandton CBD are so far apart – about 15 Kilometres. In New York, the Wall Street financial district, Mid-town Manhattan and Upper Manhattan are in relatively close proximity. In London, the City, the West End and the new Docklands office area are all close-by in the heart of the metropolitan area.

### *Detailed Plans*

In Johannesburg, more detailed plans for various areas have been produced. A policy plan was formulated for the Johannesburg CBD containing various measures to rejuvenate the city centre and to reverse its decline. How effective these measures have been is not certain but there have been some noticeable improvements in certain parts of the area including an increase in residential use by the conversion of office, warehouse and other buildings as well as in new residential accommodation. This has been undertaken both by the private sector and by municipal development agencies. Here the more detailed planning policies appear to be positive although there are still large areas of decay and derelict buildings which will take time to remedy.

In the case of the Sandton CBD and also the Rosebank node, detailed plans were prepared with the title *Urban Design Framework* (UDF). These plans are quite different to the policy plan of central Johannesburg which was largely set out in descriptive terms. The UDF plans for Sandton and Rosebank are physical plans showing different zones, land uses and requirements to be applied to land development applications. At the same time, they provide development and design criteria incorporating principles of urban form, public transport support, walkability and urban management. These guidelines all relate to the public realm and so are matters for the municipality to implement. Some plans for this public realm have been initiated but are limited and sadly the use of the UDF has been mostly to regulate the zoning of private sector development.

Both the Sandton UDF and the Rosebank UDF are lengthy detailed documents which took time and no doubt considerable expense to produce. They contain some analytical data but do not include some key planning statistics; They produce planning guidelines but little explanation of how these development criteria were determined; they give general statements of urban design; but little specific to the particular locality of these development nodes. The result is more a general statement of development aims rather than specific land use objectives. It has been argued that the particular planning proposals of these UDFs are not adequate or practical to realistically influence future development. Some aspects of the Rosebank UDF illustrate this criticism.

Rosebank is a development node of a particularly mixed land use character which the UDF recognizes. The UDF implies that this variety of land uses should continue in future development. Indeed, whereas in the past, new development was confined to offices and retail expansion, more recently there has been a marked increase in residential development. However, the UDF document does not measure the amount or extent of the different land uses or suggest what their future scale should be. It does not, for example set targets or projections of future shopping floor area, office floor area or number of residential dwelling units. Without this data it is not possible to estimate the need for infrastructure

services or to project future traffic and transportation needs. The design framework recognizes the limitations of existing services infrastructure and roads but no attempt it made to balance this against the demands of an unknown future land use pattern.

Relative to other major development nodes, Rosebank is well endowed with public open space. The UDF proposes that this area of parks should be increased. No measurement is given of how this need is calculated. Nor is it indicated where this additional park area should be located. The more recent approval and development of several major new residential apartment buildings has required the payment of millions of Rands in contributions to the municipality for parks but this money disappears into the municipality's general revenue and does not result in the creation of new open spaces where it is needed. Here, there is a lack of connection between thought and action.

In the UDF, the Rosebank node is divided into zones each with a different limitation on building height. In the core area this varies from 10 to 15 to 20 storeys. How those buildings heights were determined has no explanation. There is a case to be made that in the core area the difference between 10 and 15 storeys has little town planning relevance in a high intensity development node. While the Rosebank UDF identifies different height zones and building coverage limits, it does not contain any floor area or density proposals. This means that there is no scale of projected development which is essential to determine future traffic generation or the requirements for additional water, sewerage and electricity. This creates a missing element necessary for the planning of future development and contradicts the principle of integrated planning. What the UDF suggests is only that development growth be monitored and that services be upgraded when the demand is created. When that happens there will be the inevitable delay in planning, programming, budgeting and implementing infrastructure requirements and, as in the past, development will be frustrated. To this extent the UDF cannot be seen as a detailed plan envisaged in the Spatial Development Framework.

Arising from the enactment of SPLUMA the national department has produced a comprehensive manual of guidelines for the formulation of SDFs at national provincial and municipal scales as well as for detailed spatial plans which are referred to as precinct plans. In the first section of these guidelines the limitations of current SDFs are very well recorded. These limitations include the following observations relevant to existing spatial plans:

- *“An over reliance on generic policy statements that do not contribute to performance.”*
- *“SDFs are characterised by inexhaustible pages of non-directional analysis”*
- *“SDF proposals generally lack clear spatial focus”*
- *“SDF proposals do not incorporate aspects of spatial structure that should be actively planned and managed by the public sector”*
- *“SDF proposals also usually contain unconvincing and often inappropriate guidance to the required private sector actions”*
- *SDF proposals often do not reflect any apparent linkages between planning, budgeting and implementation*

These observations echo exactly the comments on the inadequacy of the Rosebank and Sandton UDFs as a form of detailed or precinct plan.

In these guidelines is a refreshing statement on the form of a SDF. It is that: *it needs to be presented in a reader friendly format by shifting away from text heavy formal documents laden with jargon and technocratic language; and*

*should be written in simple language.* This is not to say that the content of a SDF should not be elaborate but that it should be clearly understandable and meaningful. This is very seldom the case in the spatial plans produced to date. They are filled with esoteric language which cannot be commonly understood and have little practical value.

## ZONING

The regulation of land use or development control by means of zoning remains the major land use planning activity of municipalities, at least in the major cities. Whereas in the early days of town planning schemes, zoning was seen to be a means of avoiding nuisance and maintaining environmental amenity it has become a method of controlling urban growth, managing traffic generation, regulating the provision of engineering services and attempting to influence the quality of urban design. Yet these aspects of urban development can be independently managed by the municipality without many of the present zoning regulations.

It is already clear that the land use scheme in SPLUMA is essentially the same zoning system as the town planning scheme of the ordinances. This form of zoning, more like that of the USA, aims to regulate land use for the purpose of amenity, the avoidance of nuisance and the separation of land use activities. Its essential nature is to avoid an undesirable built environment. Our land use zoning does not promote or create urban development and the inadequacies of towns and cities have not been eliminated by town planning schemes. In the Transvaal ordinance of 1965 the purpose of a town planning scheme included the “replanning or redevelopment” of an area but this was omitted in the 1986 ordinance. The intended replanning or redevelopment never happened because this requires government action of providing infrastructure, land ownership, building construction and finance. Without this, zoning is just a notation on paper.

Initially, zoning was relatively simple. The first town planning schemes had far fewer different use zones than today and development control measures were more limited. The first Johannesburg Town Planning Scheme in 1946 had only 13 land use zones. Now it has been increased to 34 use zones. This has been due to some extent, in later years, to the emergence of new or specialized forms

of urban activities or buildings such as computer centres, fitness centres, photo copy shops, townhouses and sectional title apartments, motor fitment centres, automatic teller machines and many more. This prompted the authorities to create additional new zones each with different combinations of permitted land uses. It was an attempt to isolate different land uses as far as possible on the basis that the separation of land uses maintained good order. In addition, completely new types of land use zones were introduced including cemeteries, sewerage works, government purposes, reservoirs and railway purposes. The logic in having these use zones is not clear. Government purposes is not a land use – it is a category of state owned undertaking which could be such completely different purposes such as a nuclear power station, a prison, a military base or a police station. Ownership is not a land use. It serves no purpose to include each and all of these vastly different purposes in one meaningless land use category.

The growing number of narrow different use zones together with more detailed regulatory conditions increased the complexity of zoning. As a result it has become ever more frequently necessary to rezone land for new or more varied types of development. Added to this were distinctions of particular land uses such as a confectionary, a fishmonger and a canteen. These uses were seen to be a potential nuisance and to be separately controlled. Whatever the reasons in the past, today these distinctions and numerous other particular purposes are no longer relevant. Their continued existence adds to the frequent necessity to rezone land for a minor inconsequential change of use when the current policy objective is to create more mixed land use.

Municipal planners in South Africa are not alone in their obsession with trying to define and control every possible different land use purpose. An amazing or amusing example was recently quoted in a British newspaper. Britain does not have a system of statutory land use zoning as in South Africa. The permitted land use of a property is its existing use and any change of that use requires planning approval. In this particular case an existing ladies' hairdressing salon

in the town centre closed its doors due to a lack of demand or some other reason. A new tenant emerged who intended to open a ladies' beauty salon on the premises. This was not possible without a planning application and approval by the municipality because the beauty salon was considered not to be exactly the same use as the hairdressing salon which previously existed. Can there be any town planning logic or explanation that these two business purposes are in any way so different that they justify land use planning control? Similar absurdities still exist in the zoning of many South African town planning schemes which create unnecessary and excessive municipal administration in planning practice.

It should now be clear that although the system of zoning in this country is deeply entrenched in municipal land use administration, its practical application has not changed to meet the present day objectives of urban planning. It has not been modified to meet current development needs or to change the restrictive practices of the past – something that has been seen as an urgent priority. That zoning in the town planning scheme has been considered a negative aspect of the urban planning system led to the argument that something different was needed. This partially explains the new title of the *land use scheme* and that there would no longer be just zoning and development control but a wider concept of *land use management*. But there is yet to be any clear explanation of what these new terms mean. Since the advent of SPLUMA in 2016, a number of municipalities have produced the new land use schemes. The Gauteng municipalities of Tshwane, Johannesburg and Ekurhuleni have introduced these new zoning regulations while smaller municipalities are busy with assistance from the province.

A land use scheme is required to be a single method of zoning for the entire municipality. In the metropolitan areas of Gauteng this means the replacement of a number of different town planning schemes of which there were 14 or more in the Johannesburg municipal area. Thus far, the land use schemes of Tshwane and Ekurhuleni are little or nothing more than an amalgamation or consolidation of the previous town planning schemes. There has been no change or simplification of zoning – no new measures appear to improve land

use regulation. The City of Johannesburg has very recently introduced its new land use scheme for the entire municipal area. This is nothing more than an consolidation of its numerous previous town planning schemes with some technical changes of detail. It does nothing to simplify or improve the zoning system.

A radical change of the present zoning system is not easy and may possibly have some legal implications. It has already been argued that, contrary to the view of many critics, land use zoning is not discriminatory and is not a mechanism to achieve the social inclusion, spatial equity, welfare and other inadequacies of the past. Zoning is a restriction on the use of land, not a catalyst for development. If anything, zoning is unduly restrictive as has been agreed by academics, political reformers, planning professionals and the land development industry. It is the one characteristic of our zoning which can and should be changed. The answer, which is one of the basic aims of government policy, is simplification and by this, efficiency. The more complex and detailed zoning becomes, the greater is the administrative burden in municipalities and less efficient land development is the result. In reforming urban planning there are two important requirements. The first is to develop more effective spatial planning which is underway but has yet far to go. The introduction of spatial planning for guiding and determining future land use has a good but superficial foundation in SPLUMA. It however requires greater attention to clear and more practice specific planning policies and the development of social facilities by municipalities. Perhaps, for the time being, municipal officials should avoid esoteric dictates like “social inclusion” and “spatial equity” – at least until these can be properly defined in practical and workable terms. The earlier quote in the spatial planning guidelines of the Department of Rural Development and land Reform bears repetition: “SDF proposals generally lack clear spatial focus”

Spatial planning has provided the potential for the one reform of the planning system and in time may yet transform planning practice. The second reform needed is the simplification and efficiency of zoning and development procedures. This means an overhaul of zoning in the new land use schemes. In current urban planning and the new land use schemes there is a plethora of

land use zones. In the interests of simplicity these could be reduced without undue negative results. Consider the following examples.

### *Residential Zones*

Presently, zoning schemes have four or five different residential zones. Yet there are only two forms of housing development. Firstly, individual dwellings whether attached or detached where each dwelling unit has its own separate erf or portion of land. Secondly, there are multiple unit buildings in which the dwellings are owned under sectional title or are rental accommodation. These different forms or typology of residential use are primarily a result of development density. The density of housing determines whether a dwelling can be a separate freehold unit or whether a part of multiple ownership in one building. Residential zones, 1,2,3,4 and 5 are not different land uses, they are simply a basis for different housing densities. These purported land use zones are not necessary; the determining criterion of housing type need only be density, not land use zones. Only one or at most two residential zones are necessary. If the zoning on a piece of land next door allows three dwelling units what difference does it make to a neighbour whether these are single detached units or three units in a single building.

### *Business Zones*

From the original two business zones there are now four different business zones in town planning and land use schemes. This completely contradicts the goal of mixed land use in development nodes. Practically, there is only one necessary distinction in business land use. This is between retail use – shopping centres – and other businesses like offices, services industry and other commercial activities. It would be quite sufficient to have only two business zones: one which would include retail shopping facilities and one in which shops are excluded. There is no longer good town planning reason to have one of the business zones exclusively for office use. There is a growing and justified need for office complexes to include other purposes such as a photocopy and print

shop, a fitness centre, a dry cleaner, a coffee shop or restaurant, a convenience shop and many other activities which are useful and easily accessible to office workers.

### *Commercial Zones*

For reasons similar to those applicable to Business zones, Commercial zones in a land use scheme could be entirely deleted. This zoning type was only created under the apartheid policy to support industrial decentralization to the border areas which is now totally irrelevant.

### *Other Zones*

Are some other use zones still necessary? These include Amusement, Public Garage, Parking and two separate Open Space zones – Public and Private. The difference between Public Open Space and Private open Space is one of ownership, not land use.

### *Zoning Restrictions*

There are many more aspects of zoning restriction which can be questioned. Most of these outdated development limitations such as site coverage restrictions in major development nodes have no useful purpose. As is all too apparent in the Sandton CBD for example, coverage restrictions of around 90 % have not resulted in any noticeable improvement in environmental quality. If we are to build world class cities of intense, high rise business nodes, are building set-backs always useful and necessary? With the present form of zoning, changing the height, coverage and building line restrictions requires a planning application which most often needs to be a rezoning. This all adds to the administrative burden of municipalities. This brings us to a third problem of planning regulation and zoning in the next chapter.

Another debatable element of zoning is the requirement to provide private car parking facilities in any development. Before the emergence of the decentralized suburban shopping centre, town planning schemes did not have any requirements for parking to be provided on site including for office buildings in the centre of town. Parking facilities were then made mandatory as being necessary for the shoppers who drove by car for their purchases and for office employees who increasingly used private transport. A range of parking ratio requirements was introduced for every type of land use. The obsession with traffic and roads in urban areas in the decades between 1970 and about 2000 made the provision of parking in new land development almost the single overriding criterion for planning approval. Municipal planners, it seems, were unduly concerned that if parking were not provided by the enforcement of zoning regulations, cars would be parked in the streets leading to congestion and traffic chaos. There was little appreciation that the developers of shopping centres and offices would provide the necessary parking without any coercion in order to meet the demands of their tenants and in business self-interest.

The mandatory provision of parking took an interesting turn in the 1980's. A government commission of enquiry into urban transport led to attempts to limit private car use. Town planning schemes were amended so that the provision of parking in the city centre was severely restricted. The regulations now placed limitations on the amount of parking which was allowed. Without any complementary improvement to public transport there are many planners who believe that this contributed to the increased decentralisation of offices and a decline of the city centre.

More recently in Johannesburg it was proposed that a general restriction on parking be applied to all shopping and office development in the city, mainly to encourage more public transport use. This proposal was in a very poorly drafted report and its recommendations have since been ignored. At the same time, the last 20 years has seen a steady reduction in the need and demand for parking in major shopping centres. The standard parking ratio requirement for shops has, for many years, been 6 parking spaces for every 100 square metres of shopping space. Parking studies of a number of big centres have shown that

the actual need is now down to 4 or less parking spaces per 100 square metres. What has caused the change to the long existing pattern of parking demand? It is a change of shopping habits of which extended trading hours and weekend shopping on Saturday afternoons and Sundays is a factor. Overseas, the introduction of on-line shopping has probably also had an impact. It is interesting that on-line shopping in Britain reportedly accounts for well over 25% of retail activity. In South Africa the figure is less than 5%. This prompts a related observation.

For many years in Britain, planning was opposed to the development of regional and decentralized shopping centres. A major reason was that these centres would result in the decline and decay of the traditional town centre where most shops were located. In Britain the town centre shopping area is referred to as the *High Street* which has been regarded as a very desirable and valued feature of the urban landscape. Even though there are far fewer major new decentralised retail centres in Britain than in South Africa or North America, the high street and its small shops in many urban centres has declined alarmingly, resulting in urban decay. A major factor is that for historic reasons there is very little parking available and, with high private car ownership, access to bigger supermarkets in larger urban centres is far more convenient. In the past few years the demise of the high street has become a subject of renewed concern, not just in planning circles but also as a national debate in the press and on television. One view is that planning measures should be taken to restore the viability and variety of shops in the town centre but no clear means of doing this have emerged. The opposing view is to allow the high street to change its land use and no longer be a shopping precinct. One of the arguments is that on-line shopping makes the survival of many small local shops impossible and even threatens the viability of large retail operations as they presently exist. Maintaining the high street could be just nostalgia and sentiment.

A significant reform of zoning regulation can be introduced which should not raise legal difficulties. This would be by establishing a better relationship between planning policy in the MSDF and the zoning of the land use scheme. The introduction and adoption of new land use planning policy by a municipality

requires public consultation. This means for example, that policy proposals to increase residential density will have considered comments, representations and objections before being approved. Then, when a development application is made for rezoning or subdivision for the higher density which the municipality has already approved in principle, why should it be necessary for that development application to be advertised, open to objection and subject to a planning tribunal procedure which is a duplication of the consultation in the SDF process.

In the above example, provided that the density policy is clear, unambiguous and practical, the process of the zoning amendment or subdivision could be by means of a simple development approval or consent. Not only would this be more efficient in saving time and costs, but also it would dramatically reduce the administrative burden on municipal officials which, as has been noted, is a major obstacle to a better planning system. Quite obviously this would also require much improved integration in the planning of land use, infrastructure and the provision of social services.

What is to be learnt from all of this is that things constantly change and this is the challenge of urban planning. The lesson is that zoning regulation and rigid prescription is not a solution to managing urban affairs. As policy dictates, and as SPLUMA intends, planning practice needs greater flexibility. The priority in the system is an extensive reform of zoning in the new land use schemes, but none of this has emerged.

## ADMINISTRATION

The third problem of planning regulation is its administration. The process of urban growth and new land use is already seen to be fettered by a shortage of urban planning skills, both in quantity and quality. This negatively affects the efficiency of the land use planning system with the resultant effect of long delays in development approval by the authorities. In the three metropolitan municipalities of Gauteng the rezoning of land and the establishment of a township to achieve urban change and growth involves an administrative process of generally not less than 2 years for complete approval. An already suggested solution is an increased number of staff in municipal planning departments with increased levels of expertise. Some of this may take several years but there is a complementary approach. This is to reduce the planning procedures required and to streamline the process. In attempting to do this, SPLUMA provides for timelines to be applied to the land development application process and municipal planning by-laws have included this in their regulations. National, provincial and municipal departments particularly, which are concerned with aspects of urban development proposals, are required to provide their comments and requirements on development applications within a set time period. The Johannesburg Municipal Planning By-Law States that if these departments do not respond timeously it will be deemed that they have no comments, requirements or objections to the intended development. As a general rule the majority of these organisations do not respond within anything like the time limits prescribed. When this happens, as it most often usually does, the municipal planning department does not then deem there to be no comments and proceed with the application. The matter is simply pended indefinitely. Planning officials are totally reluctant to apply their own rules and there is no solution in sight. The municipalities have made rules which apply to themselves but which they fail to respect.

Much can be done however, by reducing the complexity of the land development process. The first step, as already suggested, is to simplify zoning in land use schemes and to reduce the multitude of different applications necessary before development can take place. In Johannesburg there are approximately 1150 rezoning applications, 110 township applications, 870 consent use applications and 2880 other minor applications annually. This total of about 5000 applications could easily be reduced significantly. There would then be less of a backlog of applications, possibly fewer planning staff would be needed or more time would be available to deal with those planning and development matters which are more important. The following are some suggestions to reduce planning administration.

#### *Density*

It is not entirely or at all necessary for a land use scheme to prescribe residential density. The number of dwelling houses permitted on an erf determines whether, and into how many portions, it may be subdivided. A proposal to increase the number of subdivided portions not only requires approval of the subdivision plan, it first requires a rezoning to amend the density restriction and then, the two applications which have the same end purpose, are administered separately and in series. – the one after the other. These should be done in parallel. Even better, in the Johannesburg Land Use Scheme, despite having different residential density zones, there is an overriding provision that a change of density by subdivision does not require a density rezoning. This eliminates a significant planning procedure. This unique method of achieving subdivision was introduced more than 20 years ago without any adverse results.

#### *Building Height and Coverage*

In development nodes, the building design of shopping centres, offices and other non-residential uses is a function of the coverage and building height appropriate to each particular purpose. The resultant building form in the more intensely developed nodes has minimal affect on land use, activities, traffic or infrastructure. Early town planning ideas of civic design, physical amenity, natural light and over-shadowing have far less meaning in the modern large city.

Technology such as air conditioning, solar heating, insulation and modern building materials have overcome many of the problems of the past. Are these zoning restrictions necessary today? More importantly, are they affordable? It is easy to see that coverage and building height regulations have had practically no effect in creating a quality of civic design or visual attractiveness in the centre of Johannesburg or in the Sandton CBD. These development limitations often mean a property has to be rezoned for a proposed new high-rise office building on a site already in a sea of multistorey buildings. All of this is an unnecessary administrative burden. Heritage areas of historic buildings and places should be an exception but in recent decades the approval of increased building height and extended coverage in the major business centres has almost never been refused. Why then not remove these administrative restrictions where they are no longer relevant?

Zoning is a statutory mechanism which is what makes it a relatively cumbersome tool for land use management. With the spatial planning of the SDF now in place its policy content provides the means of managing land use change. If spatial planning policy is used as a guide to planning decisions it would be a far simpler and quicker method for development approval. The preparation and adoption of a SDF and its policies includes a public participation process. As a result, any new development policy which deals with matters such as building height and coverage would not need the process of rezoning or consent use in which public participation is repeated. This is just one example of how urban planning administration could be greatly simplified.

It is not just the technical aspects of urban planning administration that need reconstruction. There has, in recent years, been an ever increasing call for structures, operations and attitudes in municipal urban planning administration to be remedied. The growing dissatisfaction with inadequate performance, poor service delivery, inefficiency and authoritarian attitudes is a major concern. In a very recent newspaper article concerning land development it was stated: “the bureaucratic and dysfunctional local authority approval process is a risk and

weakness” (in land development). This has been widely recognised and acknowledged, even by government including the national president himself. That subject will be left to other commentators to elaborate but it is a very real problem in planning practice. There is an argument that as urban societies grow, technology advances, and large or mega cities emerge, their planning and management becomes more complex. This leads to a perceived need to increase regulation or for more detailed management by the municipality. This is especially so when government attempts to intervene in so many more aspects of urban living. The result is more regulation of urban affairs and, in this case, of land use planning. This is clearly evident in highly industrialised western countries such as Canada, Britain, Scandinavia and in Western Europe. In these countries elaborate urban planning by municipalities is possible because they have the financial resources, the trained skills and far fewer problems of disadvantaged communities to deal with. Whether this is all positive and productive is a matter for debate. What is certain is that in South Africa far more facilitation of development is needed and less regulation of land use is necessary.

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### OUTCOME

Urban planning is concerned with the future but the future of urban planning in South Africa is hidden in clouds of uncertainty. The development of towns and cities - the process of urbanization - is a social and economic phenomenon. From the time of the agricultural revolution, history shows that the evolution of societies generate urban centres as distinct from simple agricultural settlements. Cities have an influence on but do not create societies. This is relevant to the present discussion because there is a mistaken thinking in planning practice that urban land use alone can solve social problems.

Urban planning arose from a concern of eliminating and avoiding the unacceptable conditions of industrialisation in towns and cities. These were the conditions of the physical urban environment: inadequate housing, poor sanitation, polluting factories and the lack of community facilities. This was most evident among the poor and working class communities so that the aim of planning was seen to be improvement for the socially and economically disadvantaged sector of society. To this extent, early town planning was understood to be a matter of social welfare.

However, the true motivation behind town planning was a physical urban environment for the general welfare of all citizens. In practice it is related to concerns with the built urban environment. Urban planning does not provide for education and schools, medical care and hospitals, community services and social housing. The provision of these facilities, except in the case of the more affluent society, is and can only be made by government. The function of urban

planning is limited to identifying and setting aside land for these facilities and services. In this sense urban planning is not a system for achieving social welfare. It is concerned with land use in order to facilitate the spatial distribution of social welfare.

In this short historical account of urban planning in South Africa it can be seen that in practice the subject and purpose has not been and still is not properly understood. Even though in the new democratic era it was realized that land use planning practice was not simply the restrictive control of spatial development, it was mistakenly thought that a new system would eliminate the social and racial injustices of the past. This was the misconception on which the intended reform of urban planning was based and which led to the introduction of the failed planning legislation in the form of SPLUMA.

It is evident that there is little practical reform in the way our towns and cities are planned. Land Use regulation continues to be excessively restrictive when the system of zoning remains unchanged. It has not been simplified or made more efficient as was intended. The British example of land use planning shows that a formal zoning system is not necessary. It may not be appropriate to do away with zoning entirely in South Africa but there are many aspects of land use schemes which are no longer necessary.

While the concept of spatial planning is now part of the urban planning system in the form of the SDF there is not an adequate understanding of how these plans should be formulated and used. The legacy of planning by restrictive land use control has negatively affected spatial planning and land use policies. The municipal SDF is too often prepared in unnecessary detail and seen as a means of controlling rather than facilitating urban development. Municipal planners seem too often to fail to appreciate that development objectives require government action. In the development principles in SPLUMA<sup>9</sup>, aims such

<sup>9</sup> Section 7

as inclusion, the elimination of poverty and deprivation, the redress of imbalance and secure tenure require measures by government: they cannot be simply achieved by development policy statements in urban plans. Implementing the measures of social welfare are dependant on government and municipal departments responsible for housing, health, community facilities and education. What urban planning can do is to integrate these needs with land use in development policy plans. This applies particularly to essential services, infrastructure and which is still sorely inadequate.

There is a case to be made that, as a developing country in which there is a strong contrast between highly developed modern cities and underdeveloped smaller towns and rural areas, a shortage of skills and experience and with strained financial resources, urban planners should not try to emulate the elaborate planning practice of more mature countries. We can certainly learn from Western Europe, North America and Britain but we need to adapt to local circumstances. Without disregarding the very essential aims in urban development and the important reforms that are necessary, urban planning should be reduced to more essential and clearly stated objectives. That is certainly the message in the spatial planning guidelines issued by the national department of Rural Development and Land Reform. Spatial plans should be expressed in meaningful terms which are clear and easily understood and must be supported by analytical data. How can we contemplate impractical policies of inclusionary housing which only address a very small part of the housing need when the vast majority of housing inadequacies are in the apartheid Black townships, squatter settlements and new low income housing areas on the periphery of the urban area. How can we envisage housing policies in the older established residential areas that propose densities which represent a number of housing units well beyond the likely demand for more than a generation ahead and which probably, will not take place. And, if these densities do come about there is no provision in the spatial planning for parks and open spaces. Parks, open space and public areas are defining elements of a quality urban environment and should be a high priority in plans for the future. If the population of Johannesburg and other cities continues to grow at such a rate, more open

space will be essential. Very few new parks have been created except in gated communities and golf estates and the city of Johannesburg has a sad record of selling existing parks for development.

In SPLUMA there are idealised criteria for development in spatial planning and land use management such as improved access to land, social inclusion, uniformity, flexibility and efficiency. Nowhere are these criteria translated into measures to be applied in planning practice, either in regulations, land use schemes or in municipal by-laws. Added to this uncertainty is that various land use schemes and planning by-laws fail to include some obligatory requirements of the Act. This leads to the conclusion that the legislation for a new system of planning as intended, is inadequate and land use management remains unchanged. The highly anticipated reform of urban planning has not occurred.

Spatial planning for the future of urban areas could be better served and be more effective if it were concentrated on basic requirements and with an understanding of how the land development market operates. It needs to take advantage of the forces that drive urban development and not be a system of trying to dictate a precisely predetermined result. And, it requires the active involvement of municipalities in planning and providing urban infrastructure. While all this is a subject for attention, an immediate priority is to find and implement a better system of land use management. It is to transform the narrow system of control to one of facilitating development.

The analysis and comment in the proceeding chapters may well be seen as incomplete and superficial to a degree. The subject deserves a greater depth of consideration and discussion. Someone else can tackle that daunting task and hopefully someone will. In the meantime however, there is an urgent need to reformulate the practice of urban planning: to introduce the change which the new legislation has not achieved.

As has been emphasized, the need is to do two things. The first is to understand and achieve in practice a more meaningful and appropriate form of future land use planning – spatial planning in the form of the MSDF. These policies need to be based on real circumstances and used as a guide to the operation of land

use management. They need to be practical and achievable – not the esoteric and theoretical plans they currently are. For this purpose, the SPLUMA process needs to be completed by the missing norms and standards which the Act says must be provided.

The second need is to properly develop a land use scheme which retains the concept of zoning but which is extensively changed to a system of simplicity and efficiency. A system which is more flexible, aimed more at facilitating development – not restrictive control. These were the criteria and objectives behind the planning system which the new legislation was intended to deliver but has not produced.

This is what should be the future of urban planning practice. Urbanisation, and cities particularly, lie at the heart of human development and progress. It is urban development which accommodates developing society in its social and economic progress which results in the growth of towns and cities. That development is dependent on the active involvement of both government and private enterprise.

If planning practice has not been changed for the better what can be done to achieve what is needed and was intended? Some suggestions for the future are possible. These are based on the belief that there should be a focus on current circumstances and the primary needs for a better system of land use administration.

### Spatial Planning

The concept and requirement for spatial planning in the form of Spatial Development Frameworks is well recognised in the new legislation. In practice, however, there are inadequacies in most of these policy plans.

## Spatial Plans

- Spatial plans, if they are to be useful guide to achieving desired future urban development, need to contain positive practical strategies. The aim should be to provide the means to promote and encourage urban growth and land use change to facilitate intended results which are achievable. This means firstly that the municipal SDF must have a proper statistical base; it should be prepared using data that is relevant to planning objectives. An analysis of relevant data, as has already been noted by the department of Rural Development and Land Reform is too often ignored. One example is population growth estimates related to residential densification. There is a need to quantify future housing needs for different socio-economic groups and to distinguish this geographically within different parts of the urban area. This is essential in order to identify not only the specific areas for higher housing density but also the priority for its development. The current practice, as in the Johannesburg case, of applying a standard density increase to the entire city area is impractical and cannot work – at least in the foreseeable future. Without a measurement of the quantity of housing to be provided in any particular area, the planning of social and physical infrastructure becomes a futile exercise. It is also important to make these distinctions for two reasons: To inform citizens and property developers where new housing is possible and is actively supported with a time scale for its achievement. This will effectively harness private investment. It should also recognise those areas where new development is not possible except in the very long term.

## Integration

A missing element of spatial plans is adequate or any integration. Integration is the key word in the new planning paradigm. While this is addressed in the Integrated Development Plan of the Municipal Systems Act, it is all too often absent in municipal spatial plans. Examples have been discussed in earlier chapters and occur in numerous cases. Spatial plans need to include particulars of committed infrastructure

development – roads, water, sewerage and electricity provision which has been planned and has a programme for construction. That both land use and essential infrastructure are together necessary for development is a trite observation, but it is not demonstrated in spatial plans. The current inadequacy in this aspect of spatial planning has been shown and needs to be addressed in future. This applies not only to services provided by the municipality but also those of provincial and national government. There needs to be a better system of coordinating the different activities of bodies responsible for both land use and infrastructure. The current expression is that the “silo approach” to development needs to be eliminated.

It is not just the integration of engineering services with land use that falls short; the planning of social services is equally lacking and often completely absent. The most glaring example is in education and the planning for schools. Although municipalities are not the providers of schools, or of hospitals and other social services, their spatial plans should identify the urban areas where and number of these facilities are required. This is ignored at present. It seems, that because many vital social services are provided by provincial or national government, municipalities do not consider it necessary in their spatial plans to identify land for these facilities.

The social analysts, political commentators and academics who have campaigned for the past 25 years for a complete and radical reform of the system of urban planning in South Africa have not appreciated the practical scope and operation of urban planning. They understood that it required a new framework of planning legislation but when that came with SPLUMA in 2013, the drafters of the Act also did not understand the substance or system of urban planning in practice. As a result, the planning and management of land use in urban areas has hardly been changed. Land use planning and the provisions of SPLUMA are not much more than a reformulation of the system of before.

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## **Appendix 1**

The following explanation of terms used is to provide clarity for those who may be less familiar with the subject of urban planning. The terms are also defined in order to give the meaning specifically intended in these essays where some words or concepts are not commonly used or understood:

**Erf:** A single unit of land in a township which is defined by survey and the ownership of which is recorded in a Deeds Registry. The word is of Dutch origin and is used generically to include a stand, lot or plot which have the same meaning. The plural of “erf” is “erven”

**Essential Services:** These are the electricity, sewerage and water reticulation networks together with roads and stormwater which are provided by a municipality or a state enterprise such as Eskom and are the infrastructure which is integral to land use development

**Farm:** This refers to an area of land defined by survey but is not a township. It is usually agricultural or non-urban land. Most Farms have been subdivided and now consist of Farm Portions. Many are within urban areas and have been developed for urban purposes which, for various historical reasons have not been established as townships.

**Land Use Management:** The means by which land use and its development is administered and regulated including the provision of essential services to achieve land use aims of spatial plans.

**Planning System:** The method and procedure of preparing spatial plans, administering and regulating their implementation, and managing their results

**Spatial Planning:** The creating of plans for the growth and development of urban land use for the future. This is one of the three elements of the planning

system and is separate from the regulation and management of land use development.

**Township:** A township is the subdivision of a Farm or Farm Portion into erven, the installation of essential services together with the creation of streets and other public places where required. After survey, the township and its erven are shown on a “General Plan”. In a general context township establishment is the creation or extension of an urban area.

**Urban Planning:** the activity of devising and determining the location, arrangement and pattern of the land use in towns and cities.