

HOW TO COMPLY TO SPLUMA WHEN ACQUIRING LAND AND RIGHTS FOR NEW PROJECTS

08-09 MARCH 2017

STEFANIE MILLS CHETTY
Pr.Pln A:1691/2013



rural development
& land reform
Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA



PRESENTATION OUTLINE

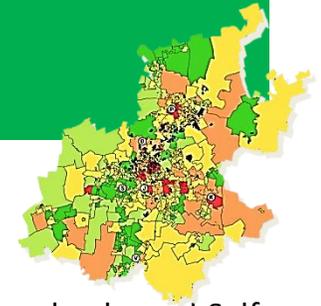
- Background
- Objectives of SPLUMA
- Fundamental changes brought about by SPLUMA
- Purpose
- Introduction
- Land Development Application
- General Approach to Categorization of LDA's
- LDA process
- Who can submit an application



- Submitting LDA
- LDA affecting National Interest
- Procedure for land use and land development applications post 1st July 2015
- Advertising and obtaining objections and comments
- Application in a site specific circumstance
- Legal administration processes: Engineering Services
- Removal of Restrictive Conditions



Background

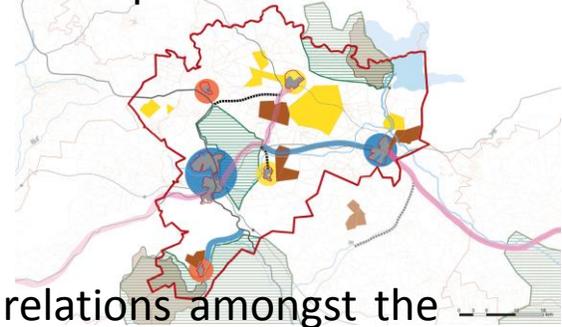


- Pre-1994 Planning was designed to serve a different political idea – segregation, differentiation, and privilege;
- Multiple laws, multiple institutions and parallel processes instituted by the pre-1994 pieces of legislation;
- Planning laws were fragmented across the old boundaries of the then four (4) provincial administrations, homelands, and Self-Governing Territories (SGT);
- In 1994, South Africa inherited complex and disjointed planning systems which manifest in unequal, incoherent and inefficient settlement patterns;
- The Development Facilitation Act, 1995 (Act No. 67 of 1995) (“the DFA”) was promulgated as an interim measure to deal with this legacy.
- SPLUMB emerged through the Green Paper (1999) and White Paper (2001) processes to replace the DFA as the legislative instrument to regulate spatial planning and land use management in the country.
- The DFA was intended to be an interim measure, and was to be repealed by SPLUMB (in its current and earlier versions).
- In June 2010, the Constitutional Court found Chapters 5 and 6 of the DFA to be invalid on grounds of unconstitutionality.
- The order of invalidity was suspended for 2 years, i.e. until June 2012, to allow the defects in the DFA to be remedied.
- Government’s intended remedy is to repeal the DFA in its entirety and replace it with the Spatial Planning and Land Use Management Act
- The Constitutional Court found that municipal planning includes the powers and functions necessary to determine rezoning and township establishment applications, and concluded that municipal planning is the exclusive competence of municipal government.



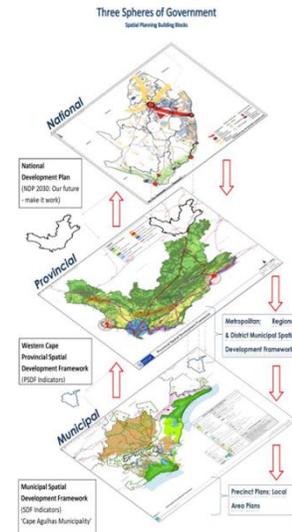
OBJECTIVES SPATIAL PLANNING LAND USE MANAGEMENT ACT NO 16 OF 2013

- Municipalities are the Authorities of First Instance
- Provide for a uniform, effective and comprehensive system of spatial planning and land use management for the Republic;
- Ensure that the system of spatial planning and land use management promotes social and economic inclusion;
- Provide for development principles and norms and standards
- Provide for the sustainable and efficient use of land;
- Provide for cooperative government and inter-governmental relations amongst the national, provincial and local spheres of government; and
- Redress the imbalances of the past and to ensure that there is equity in the application of spatial development planning and land use management systems



FUNDEMENTAL CHANGES BROUGHT ABOUT BY SPLUMA

- Municipalities are the Authorities of First Instance
- Politician and Traditional Leaders are not allowed to be members of a Municipal Tribunal Sec 36 (2)
- Intervener Status - added
- Emphasis on Spatial Planning Norms & Standards
- Wall-to-wall Land Use Schemes, not Town Planning Schemes
- Status of SDFs elevated – not merely Sector Plan in IDP core component
- Longer term vision for MSDF – Sec 21 (c)
- New concept of RSDF & SDFs at all three spheres
- Tools encouraging sector cooperation and co-ordination – NSDF, Norms and Standards, Principles, National Interest,
- Tools encouraging municipalities to work together – cross boundary issues – Municipal cooperation Sec 34 (1)
- Providing guidelines and guidance on development of municipal planning policies e.g SDF guidelines, Land Use and Rural Land Use Guidelines,



PURPOSE OF THIS PRESENTATION

- To outline the basic understanding of SPLUMA compliance and the relevant steps and processes in land use and land development when acquiring land and rights for infrastructure.



INTRODUCTION

- SPLUMA places emphasis on municipal planning
- Municipalities to have administrative capacity to manage land development applications
- Require expertise and capacity to make decisions
- Require intergovernmental support and coordination
- 1st July 2015– all land development applications to be submitted to Municipality



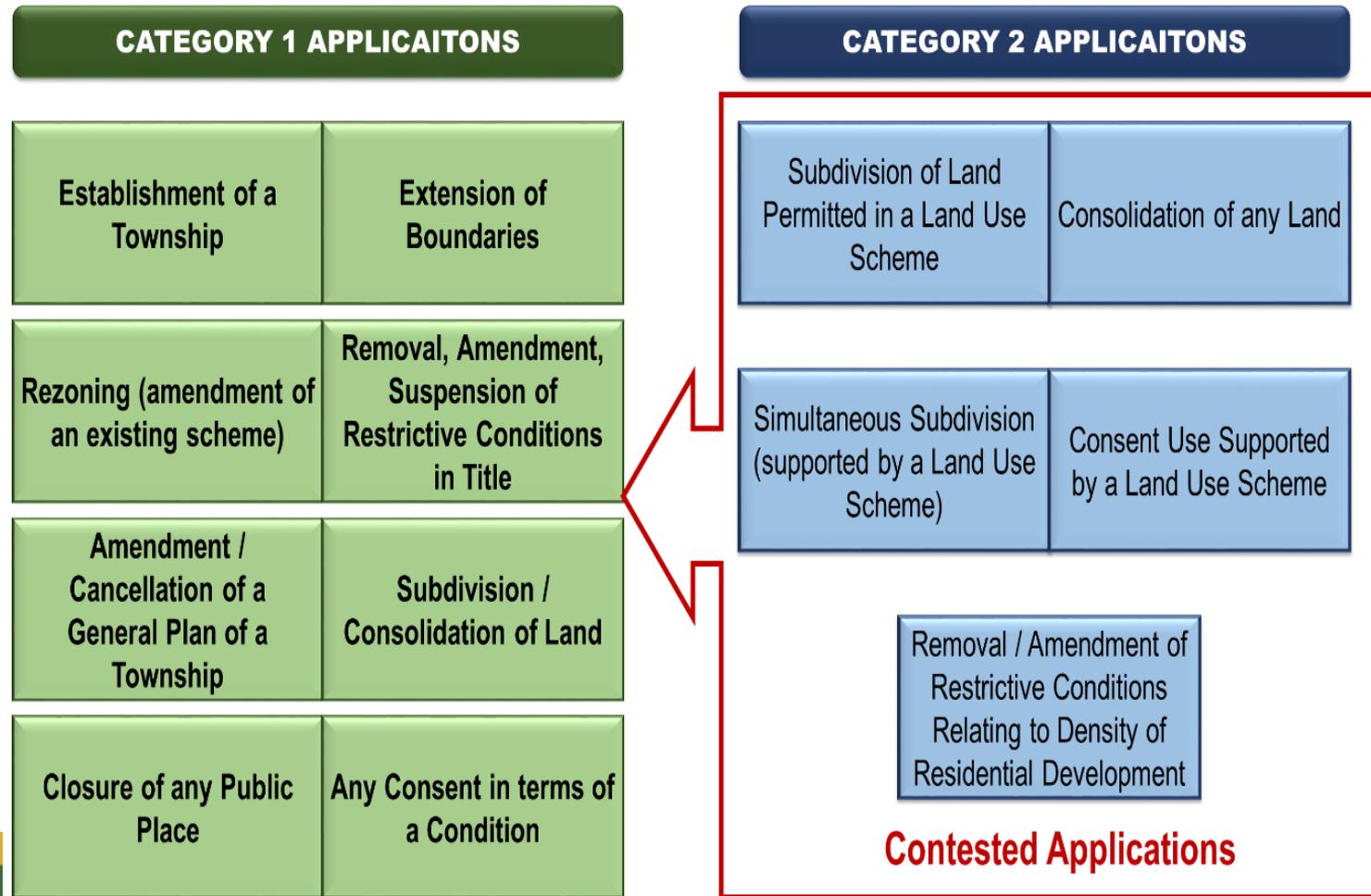
LAND DEVELOPMENT APPLICATIONS

- Categorization of applications: Section 35 of SPLUMA requires that a municipality to categorise LDAs.
- Regulation 15 also deals with the categorization of LDAS & highlights some considerations to be taken into account when LDAS are to be categorized.
- Categorization may differ from municipality to municipality.
- SPLUMA requires the consideration & determination of LDAs through specific institutions & mechanisms.
- Municipal Planning Tribunals (MPTs) & Authorised Officials (AOs) are entities that consider & determine LDAs
- Appeal Tribunals consider & determine LDAs on appeal.

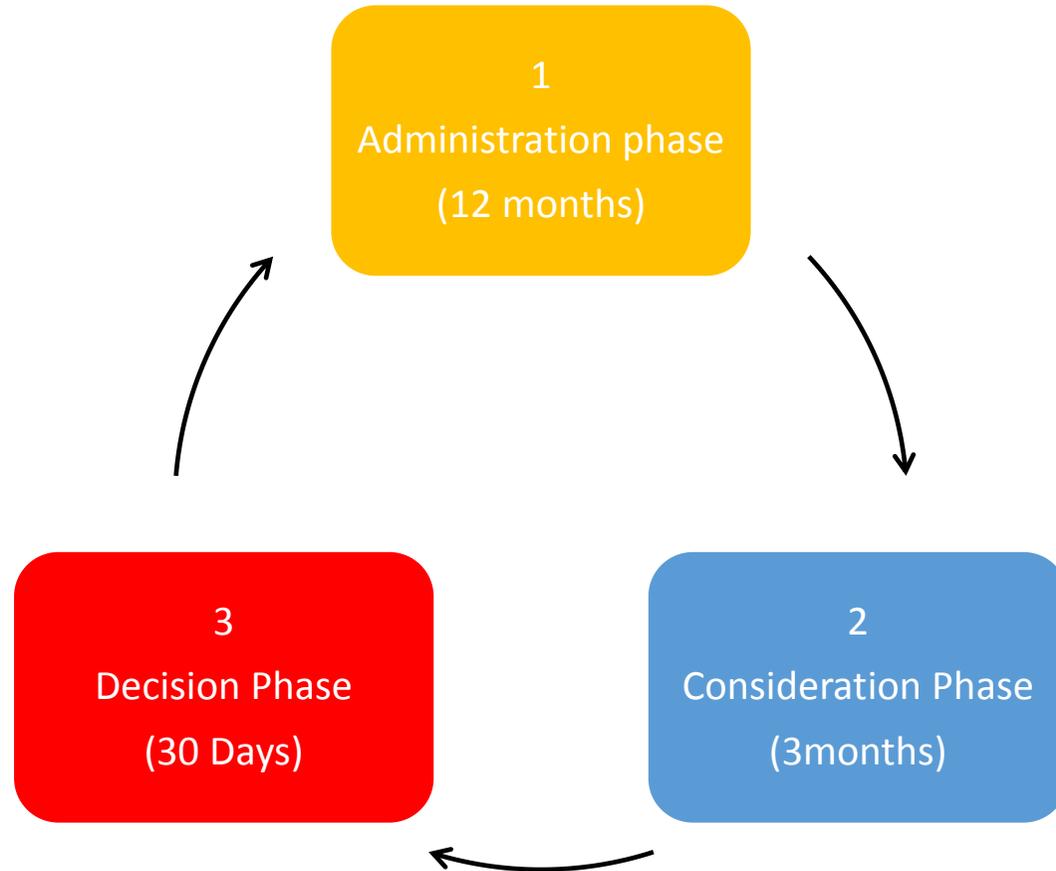


General Approach to Categorisation of LDAs

Categorization of Applications (Regulations to SPLUMA)



Land Development Application Process



WHO CAN SUBMIT LAND DEVELOPMENT APPLICATION?

In terms of section 45(1) of SPLUMA a land development application may only be submitted by-

- ❖ Owner of land (including state)
- ❖ Duly authorised agent
- ❖ Person (or agent) to whom land was made available in writing by an organ of state
- ❖ Service provider – infrastructure, utilities and other services



Section 45(1) of
SPLUMA



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

SUBMITTING ANY LAND DEVELOPMENT APPLICATION

- An applicant must understand the vision of the municipality in the IDP and SDF.
- Obtain all relevant, adopted policies, plans and frameworks to assist him/her to compile a land development application.
- Determine if the proposed development will be supported.
- Submit land development application with prescribed documents.
- Allow public participation and comments from relevant organs of state following prescribed processes and within time frames.
- EIA's must be done prior to submission to council
- Respond to comments submitted to municipality
- Attend and participate during hearing processes when necessary.
- Approval conditions can include that an applicant pay bulk contributions/ development charges when required. The applicant must adhere to any conditions that maybe prescribed by the municipality in dealing with a land development application. **S49**
- A person who's rights are affected by a decision taken by the AO or MPT can apply for an appeal. **S 51 (1)**



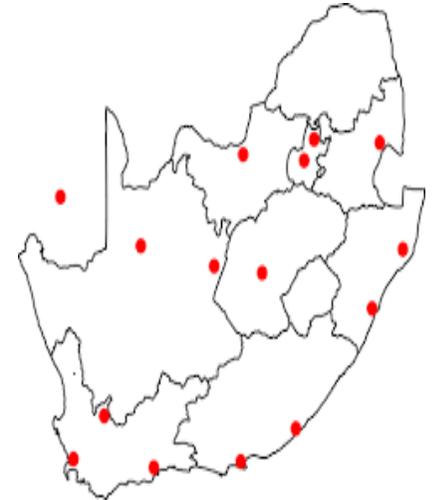
DEVELOPMENT APPLICATIONS AFFECTING NATIONAL INTEREST

Land Development applications must be referred to the Minister where such applications impact on:

- Matters within the exclusive functional area of the national sphere in terms of the constitution as outlined in schedule 4 part A.

Such as:

- (a) Regional planning and development
- (b) Urban and Rural Development
- (c) Housing
- (d) Agriculture etc.



Section 52(1) of
SPLUMA



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

PROCEDURE FOR LAND DEVELOPMENT AND LAND USE APPLICATION POST 1ST JULY 2015

- Municipalities that have adopted and approved SPLUMA compliant By-laws applications in terms of the approved and adopted SPLUMA by-laws.
- Municipalities without by-laws will use currently applicable pieces of legislation not repealed or/ and consistent with SPLUMA.
- When submitting a land development application, the correct legislation and section in which the application is made should be stated in conjunction with SPLUMA.



ADVERTISING AND OBTAINING OBJECTION AND COMMENTS

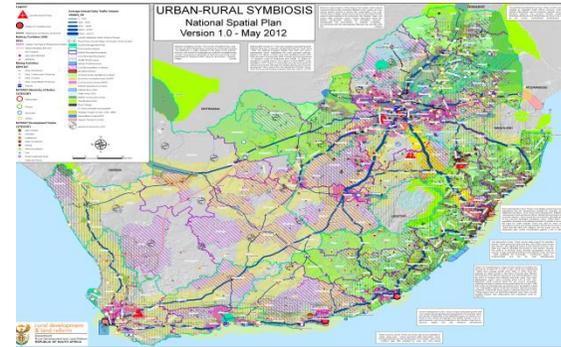
- Where there are no by-laws, relevant legislation should be adhered to when advertising and reference to SPLUMA should always be made as explained above. Where transitional measures have been given with guidelines , such may be adhere to.
- Sect 16 (3) of SPLUMA Regulation and municipal by-laws, stipulates that the administrative phase commences only after a complete application is submitted to a municipality. This means the burden of obtaining external comments lies with the applicant as part of the complete application.



APPLICATION IN A SITE SPECIFIC CIRCUMSTANCE

- **Section 22(1)**

- An MPT or any other authority mandated to make Land development decisions in terms of the Act, may not make such a decision that is inconsistent with the MSDF



- **Section 22 (2)**

- Subject to section 42, the said parties may depart from the provisions of the MSDF with the justification of site-specific circumstances.



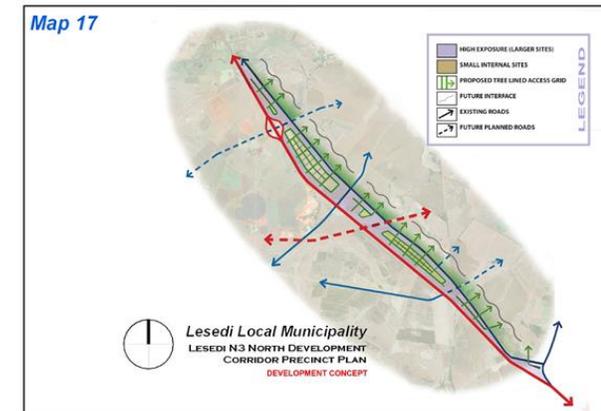
LEGAL ADMINISTRATION PROCESSES: ENGINEERING SERVICES

- Section 40(7)(b) of SPLUMA read with section 42, 49 and 50 provides for wide powers of a municipality to deal with the provision of external and internal engineering services, open spaces and the charging of development charges
- Section 49(5) if external engineering services are installed by an applicant instead of payment of development charges, the provision of the Local Government: Municipal Finance Management Act, 2003 (Act.56 of 2003), pertaining to procurement and the appointment of contractors on behalf of the municipality does not apply.



REMOVAL OF RESTRICTIVE CONDITIONS

- Section 47 (2) and (4) states respectively that the Municipality shall consider the rights of those affected and notice of an application to remove, amend or suspend a restrictive condition that operates to the benefit of the state shall be sent to the responsible administration that administers that law.



REMOVAL OF RESTRICTIVE CONDITIONS

- Therefore the municipality may consent in terms of restrictive conditions and or amend or remove restrictive conditions provided that they can do so as substitution of authority but where the conditions are specifically excluded the applicant will still have to send the application to them to obtain consent or the municipality will do so.

Liability : Refer to section 47 (3)



- The decision making body/authority is not liable to compensate any person for any loss arising or relating to a decision made in good faith and in terms of SPLUMA.



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA

CONDITION OF APPROVAL AND REGISTRATION OF DEEDS

- The applicant is responsible for registration of the changes in the condition (amendment, removal or suspension) within a prescribe period. The applicant must apply with the Register of deeds.
- SPLUMA Sec 43 (2) provide a period of 5 years to comply with conditions of approval. This is different from the provision of former Ordinances. Thus SPLUMA By –laws becomes imperative to provide procedures and processes to deal with time frames.
- Section 53 reads “ the registration of any property resulting from a land development application may not be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with.



Thank You

Stefanie.Chetty@drdlr.gov.za

Pr.Pln A:1691/2013

Chief Town & Regional Planner

Directorate: Spatial Co-ordination

Branch: SPLUM



rural development
& land reform

Department:
Rural Development and Land Reform
REPUBLIC OF SOUTH AFRICA