

SPLUMA: A Practical Guide

by Adv Nic Laubscher, Lizette Hoffman, Dr Ernst Drewes, Jan Nysschen
Published by LexisNexis, 2016

Stuart Denoon-Stevens

<http://dx.doi.org/10.18820/2415-0495/trp71i1.4>

This represents one of the first comprehensive attempts to dissect the Spatial Planning and Land Use Management Act (SPLUMA) and to examine all of its constituent parts. As such, the book is structured using the act, with each chapter of SPLUMA having a corresponding chapter in this book. The intent of the book (seemingly) is to provide a practical day-to-day guide on how to interpret SPLUMA. It attempts to achieve this through showing how the different sections of SPLUMA should be interpreted given the relevant case law, as well as the linkages to other legislation, in particular, the Municipal Systems Act. In terms of case law, more than 150 cases are cited, and in terms of legislation, more than 120 pieces of legislation are mentioned. Noting this, this is clearly an exhaustive review of existing thinking on planning law in South Africa.

As of the date of writing this, the literature on understanding SPLUMA is growing, with notable contributions in this regard including Barnes and Nel (2017), Mashiri et al (2017), Nel (2016), De Villers (2016), Denoon-Stevens (2016), WCDEADP (2016), SACN (2015a) and (2015b), Steenkamp and Winkler (2014), and Van Wyk and Oranje (2014). These articles have all contributed to furthering our understanding of how SPLUMA should be implemented; however, none of the aforementioned texts have provided the level of comprehensive detail that this book provides. This book thus provides a welcome contribution furthering the legal understanding of SPLUMA, and provides a starting point for the many debates that will and are occurring in courtrooms; parliament, committees, and so forth; on how the various nuances of SPLUMA should be interpreted.

In this regard, some of the pertinent contributions of this book include:

- Providing extensive commentary on the intergovernmental relations between national, provincial and local government with regard to planning matters,
- Explaining the planning framework that SPLUMA, and other legislation, has created in traditional areas, a topic that is fraught with controversy at present,
- Discussing the tension between the constitutional protection of property rights, and the provisions with regard to spatial justice in SPLUMA that seem to challenge these rights,
- Extensive discussion on how Municipal Planning Tribunals should, and should not, be run.
- Clarity on how trusts, companies and individuals should deal with issues of providing authorisation to permit a land development application to be submitted for land that the entity owns.

As expected with any pioneering text, the book does have some clear weaknesses. The first is that the book does appear to take a relatively conservative stance on how SPLUMA should be interpreted. A good example of this is how the book responds to the issue of spatial justice, with it being mostly treated as an issue of including and integrating those who were previously excluded from the planning system during Apartheid (with one mention of restructuring). While this is clearly important, there are also far more radical interpretations of this. For example, de Beer (2016) presents a view of spatial justice that addresses the concept as being one

that requires fundamental spatial transformation of South African cities and settlements. Arguably, this book should have presented the full continuum of views on what exactly constitutes 'spatial justice,' and similarly on other topics that have both radical and conservative schools of thought. In this regard, what would have helped this book is a more thorough incorporation of the academic literature on planning and urban studies, given that many of the ideas in SPLUMA likely came about from the debates in the aforementioned literature.

Secondly, the chapter on Spatial Development Frameworks (SDFs), which are arguably among the most important tools for planners, and definitely among the most interesting, is only 20 pages long, and consequently very thin on details. In contrast, the chapter on land development management is 93 pages. The justification for this limited consideration of SDFs is that the requirements of this section are clear and require no elucidation. However, this is not the case. For example, part of this section of SPLUMA argues that a SDF must designate areas where "shortened land use development procedures may be applicable and land use schemes may be so amended" (SPLUMA section 21(l)(ii)). This is an innovative measure that SPLUMA has included, but one which needs considerable unpacking. To elaborate, what are the public participation processes that need to occur to permit "shortened land use development patterns"? What does this section mean by "may be applicable"? How should land use schemes be amended? These are questions with which planners are currently grappling, with both the City of Johannesburg and City of Cape Town pioneering the implementation of this section of SPLUMA. Addressing these types of issues with regard to municipal SDFs in this book would have been of considerable value to planners and municipalities across the country, and is definitely a missed opportunity.

Thirdly, the book limits itself to interpreting SPLUMA only, and does not go into the confusion of provincial acts and municipal by-laws that have been enacted. While this would be a difficult task given the plethora of municipal by-laws that have been adopted, it would have been possible to make some general comments on these by-laws, in particular what they should, and should not do. It also misses some of the nuance that has occurred in drafting these acts and by-laws that complicate the implementation of SPLUMA. An example of this is the fact that the WCDEADP (2015) Standard Draft Bylaw on Municipal Land Use Planning includes the concept of 'desirability' as one of the criteria for making a decision on land development applications. Given that SPLUMA was clearly attempting to move to a normatively based criteria for decision making, and the fact that 'desirability' was a concept that drove planning decision making under old order planning legislation, this clause represents a fusion of old order and new order thinking with regard to planning decision making. This tangling up of old and new order thinking is likely to result in significant confusion for planners in the Western Cape when making recommendations on whether an application should be approved or refused. The authors of future editions of this book should address these types of issues, given that they will be of immense importance for both planners and lawyers dealing with planning matters.

In conclusion, it is worth noting that the aforementioned weaknesses do not detract from the value of this book, it is clearly of considerable worth to South African planners. Most importantly, this book will serve as a tool to allow planners to navigate the vast sea of legislation and case law that influence how planning is practised in South Africa. As such, it is worthwhile addition to most planning departments and practises bookshelves.

REFERENCES

- BARNES, A. & NEL, V. 2017. Putting Spatial Resilience into Practice. *UrbanForum*, 28(2), pp. 219-232. <https://doi.org/10.1007/s12132-017-9303-6>
- DE BEER, S., 2016, 'Discerning a theological agenda for spatial justice in South Africa: An imperative for sustained reconciliation', *HTS Teologiese Studies/ Theological Studies*, 72(1), a3566. <https://doi.org/10.4102/hts.v72i1.3566>
- DENOON-STEVENS, S.P. 2016. Developing an appropriate land use methodology to promote spatially just, formal retail areas in developing countries: The case of the City of Cape Town, South Africa. *Land Use Policy*, 54, pp.18-28. <https://doi.org/10.1016/j.landusepol.2016.01.010>
- MASHIRI, M., NJENGA, P., NJENGA, C., CHAKWIZIRA, J. & FRIEDRICH, M. 2017. Towards a Framework for Measuring Spatial Planning Outcomes in South Africa. *Sociology and Anthropology*, 5(2), pp.146-168. <https://doi.org/10.13189/sa.2017.050205>
- NEL, V. 2016. A better zoning system for South Africa? *Land Use Policy*, 55, pp.257-264. <https://doi.org/10.1016/j.landusepol.2016.04.007>
- SACN (SOUTH AFRICAN CITIES NETWORK). 2015a. SPLUMA as a tool for spatial transformation. Available at: <http://www.sacities.net/wp-content/uploads/2015/SPLUMA-as-a-tool-for-spatial-transformation_final.pdf> [Accessed: 13 September 2017].
- SACN (SOUTH AFRICAN CITIES NETWORK) (EDS.). 2015b. Urban Land Paper Series: Volume 1. Available at: <<http://www.sacities.net/wp-content/uploads/2015/10/Urban-Land-Series-Vol-1-SACN-2015.pdf>> [Accessed: 13 September 2017].
- STEENKAMP, L. & WINKLER, T. 2014. September. Linking Spatial Planning and Land Use Management in the City of Cape Town: The Case of the Package of Plans. *Urban Forum*, 25(3), pp. 335–353.
- VAN WYK, J. & ORANJE, M. 2014. The post-1994 South African spatial planning system and Bill of Rights: A meaningful and mutually beneficial fit? *Planning Theory*, 13(4), pp.349-369. <https://doi.org/10.1177/1473095213511966>
- WCDEADP (WESTERN CAPE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING). 2015. *Standard Draft Bylaw on Municipal Land Use Planning*. Available at: <https://www.westerncape.gov.za/eadp/files/basic-page/downloads/21-English%20Standard%20Draft%20Bylaw_11062015.pdf> [Accessed: 13 September 2017].
- WCDEADP (WESTERN CAPE DEPARTMENT OF ENVIRONMENTAL AFFAIRS AND DEVELOPMENT PLANNING) (EDS.). 2016. *Land Use Planning Law Reform in the Western Cape: The Road to Transformation*. Available at: <https://www.westerncape.gov.za/eadp/sites/eadp.westerncape.gov.za/files/lupa-documents/2017-06-12/LAND%20USE%20PLANNING%20LAW%20REFORM_THE%20ROAD%20TO%20TRANSFORMATION_06122017.pdf> [Accessed: 13 September 2017].