

**Provincial Land Use Legislative Reform
Limpopo Province: Status Report
September 2011**

Acknowledgements

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1.0. Introduction

Limpopo Province, formerly the Northern Province, was established in 1994. It comprises five district municipalities (Capricorn, Mopani, Sekhukhune, Vhembe, and Waterberg), and twenty five local municipalities in its area of jurisdiction (refer to figure 1). This report aims to provide an understanding of the provincial legislation on spatial planning and land use management status quo in Limpopo Province, with the objective of contributing to the development of a more appropriate legislative process for facilitating better land use management and delivery of development.

The methodology adopted in this report is to review the state of the Province's legislative framework, provide insight into the application of current laws and processes, obtain empirical information, conduct interviews with officials, highlight provincial legislation issues, and provide conclusions that may influence future provincial legislation. It includes parts of former the homelands (Venda, Lebowa, and Gazankulu) and parts of the old Transvaal Province as indicated in figure 2.

2.0 Provincial Legislative Status Quo

2.1 History of the Planning Laws reform

Limpopo Province inherited a racially based spatial planning and land use management system, and notwithstanding the steps by the democratic government to address the legacy of this system by means of integrated planning, vestiges of the system remain.

There are two aspects that are covered briefly below, namely the land use management component of planning, and the forward planning component.

With regard to the regulatory component, the Town-planning and Townships Ordinance No. 15 of 1986 ("Ordinance 1986"), applicable to former "white", "Indian", and "coloured" areas, is the main provincial legislation relating to the regulation of land use. The administration of the whole of this Ordinance was assigned under Proclamation R161 of 1994 to Limpopo (formerly Northern Province) with effect from 31 October 1994. The Province has authorized most capable local authorities or municipalities to deal with land use regulation in their areas of jurisdiction, but this excludes former black areas or released areas in terms of the repealed Black Laws Amendment Act, 1949. The Townships Board and other statutory boards established by Province

in terms of Ordinance 1986 provide an “oversight” function to the municipal planning activities, and deal with appeals and related matters.

On the other hand, the traditional areas and former homelands, that are subject to a variety of customary and “black areas” laws relating to settlement, land use and different forms of tenure (such as The Less Formal Townships Establishment Act of 1990, and the land regulations in terms of the Black Administration Act of 1927) are administered by Province and have not been integrated into the municipal planning system. In this regard, most settlements in the traditional areas are informal (unproclaimed) and were established in terms of the Land Regulations, 1969 (Proclamation No. R188 of 1969). These settlements have no layout plans and are not surveyed. This has led to a situation where residential sites, blocks and streets do not line up properly with each other, which makes the provision of service infrastructure extremely difficult and expensive. New townships in the traditional areas are established in terms of the Regulations for the Administration and Control of Townships, 1962 (Proclamation No. R293 of 1962) or the Development Facilitation Act of 1995, referred to later in this report. Proper layout plans are designed and general plans surveyed and registered with the Surveyor-General’s Office.

In addition, the laws applicable to the rural areas of Limpopo which constituted the old Transvaal province (such as the Physical Planning Act) are still administered by Province.

One of the consequences of the fragmented and inequitable land use management system was the introduction of the Development Facilitation Act (“DFA”) in 1995, an interim measure of wide applicability that could be used in parallel with other laws by all provinces while they were addressing the much needed reform of laws in their areas of jurisdiction. This opportunity has not been exercised by Limpopo and instead the DFA (1995) has become an alternative to the existing procedures in the Province, with a provincially appointed development tribunal to deal with land development area applications. The DFA (1995) has also provided a set of normative planning principles that are applicable to all land use decisions and are generally recognized as promoting a more sustainable form of development than that led by the criteria of “need and desirability” used in the Limpopo Town-planning and Townships Ordinance of 1986. Other innovative aspects included: the composition of the DFA Tribunal (made up of technical experts from the public and private sectors); the responsibility placed on the applicant for the requisite information; the specified timeframes for activities; and the public involvement aspects.

The DFA Tribunal has functioned effectively for a number of years, but a successful Constitutional Court challenge to its use for “municipal planning” mounted by the City of Johannesburg in 2009 and upheld by the Court on 18 June 2010 will effectively discontinue its use by 18 June 2012.

With regard to the forward planning component, the DFA (1995) introduced the need for all municipalities to prepare Land Development Objectives. These, according to Berrisford (2004), were “to provide an interim substitute for the inherited structure plans and guide plans inherited from both the Physical Planning Act and certain old order provincial planning ordinances.” These remain a legal requirement, and where approved by the Member of the Executive Committee, have a legal effect.

More recently there has been the introduction of integrated development plans (IDPs) in terms of the Municipal Systems Act in 2000 (“MSA”). The MSA (2000) IDPs include a mandatory spatial component in the form of spatial development frameworks (SDFs) to direct municipal planning decisions and developmental interventions. Regulation 2 (4) of the Municipal Planning and Performance Management Regulations of 2001 added further detail to the spatial development requirements including the need to give effect to the DFA principles, set out objectives for the desired spatial form of the municipality, contain strategies and policies to achieve the desired spatial form, set out basic guidelines for the land use management system, set out a capital investment framework for the municipality’s development programmes, be aligned with the spatial development frameworks of neighbouring municipalities, and provide a visual representation to indicate where public and private land development and infrastructure investment should take place, the desired or undesired use of space, the urban edge, areas where intervention should take place, and areas where priority spending is required.

Most recently, in May 2011, the national government published the Spatial Planning and Planning Bill of 2011 that is intended to become framework legislation to regulate land use planning nationally.

There has thus been a gradual move towards a more effective and uniform set of planning laws that match the constitutional requirements of the country. However, there remain numerous aspects of the current fragmented legal and institutional arrangement that need urgent reform to facilitate a better and more integrated planning system.

The need for new provincial planning law is widely recognized to address the shortcomings of the present fragmented system, adapt the positive components of the DFA (1995) and related laws, and to align with the developmental challenges facing the wall-to-wall municipalities.

2.2. Description of the Current Applicable Planning Legislation

The following description provides an overview of currently applicable planning legislation, both national and provincial, as discussed with Mr R Dali, Mr P Daswa, Mrs P Nake, and Mr H Lindeque of the Department of Local Government and Housing, based in Polokwane (Pers. Comm., 8 June 2011). Additional input was provided by town planning consultants Mr T Pieterse and Mr P Buys (Pers. Comm., 8 June 2011), and Polokwane municipal planning officials Ivan Kholope and Mavis Vele (Telephonic comm. 14 July 2011).

a) Transvaal Town-planning and Townships Ordinance No. 25 of 1965

The Ordinance (1965) was administered by Province (Department of Local Government and Housing)

Comment: Prior to 1986, Province administered town planning in the former Transvaal.

Although there are still unfinalised applications in other former Transvaal areas, it is unlikely that there are any in Limpopo.

There is uncertainty whether all existing zoning rights approved in terms of this Ordinance (1965) were transferred and assimilated into municipal land use management schemes.

b) Town-planning and Townships Ordinance No.15 of 1986 (Ordinance, 1986)

The former Transvaal Ordinance provides guidance as to the purpose of town planning, the regulation of land use by town planning schemes (including the content and application procedures), the establishment of townships, the roles and functions of statutory boards.

Most municipalities are “authorized” by Province in terms of the s2 of the Ordinance (1986) for the purposes set out in Chapters II (town planning schemes), III (establishment of townships by private land owner), and IV (establishment of townships by local authority). In effect, they can consider, approve, or refuse land use applications.

The criteria used for decision making include municipal policies, “need and desirability” (the criteria specified in the Ordinance [1986]) and the normative principles in the Development Facilitation Act.

The provincial Department of Local Government and Housing, through its statutory boards (Townships Board and Services Appeal Board) deals with appeals against municipal decisions, for undue delay by municipalities in dealing with applications, disputes on merit, services contributions, extensions of township boundaries and other matters. These are long processes, and generally require hearings and input from the municipalities.

Comment: The Ordinance (1986) was aimed at the town planning needs of smaller and less diverse communities than are defined by the new wall-to-wall municipal demarcations. It is argued in some quarters that the national government's assignation (Proclamation 161 of 1994) of the administration of the Ordinance (1986) to the provinces infers its applicability to entire areas of municipal jurisdiction (including former traditional and black areas). However, in practice, the application of different laws to different geographical and types of communities indicates that this view has not been generally accepted.

The authorized municipalities are geared for procedures in the Ordinance (1986), but need to adapt to the wider scope of their jurisdictions by introducing new land use management schemes.

The current system is not being maintained, with records of existing town planning schemes and decisions/permissions not being kept at Province as required in the Ordinance (1986) regulations, and there have been considerable deviations from the prescriptions for the content of town planning schemes. It is likely that much of the "old" information has been lost.

The Constitutional Court 2010 ruling on the municipal power over land use matters has not affected day-to-day operations of municipalities or the provincial Department's approach to land use matters, but it will encourage the use of the Ordinance rather than the DFA as the due date of 18 June 2012 approaches.

c) Public Resorts Ordinance No 18 of 1969

This Ordinance was assigned to the Province to establish public resorts.

Comment: Although this Ordinance was important in tourism-orientated Limpopo, and it applied to areas outside the Ordinance (1986) influence, the wall-to-wall municipal jurisdictions would bring any future applications into the municipal planning ambit. In future, and if the Ordinance is still deemed applicable, it is likely that permissions would need to be considered together with comment/authorization from municipalities and environmental authorizations.

d) Transvaal Board for the Development of Peri-Urban Areas Ordinance No. 20 of 1943

The Ordinance applied to areas outside local authority areas and under the control of the Transvaal Board for the Development of Peri-Urban Areas.

These areas included local authority areas of jurisdiction established under the Local Government Ordinance 17 of 1939, the Native Affairs Act of 1920, and the Black Administration Act No. 38 of 1927, and scheduled or released areas.

Comment: The Board was defined as a local authority with town planning powers until these were repealed in terms of the old Ordinance (Oranje, 1999).

e) Town Planning Schemes/ Land Use Management Schemes drawn up in terms of the Townships Ordinances

The Ordinance (1986) provides guidance as to the purpose of town planning, the regulation of land use by town planning schemes (including the content, area of applicability and application procedures).

The Province should maintain an updated copy of each town planning scheme in its area of jurisdiction, as it is obliged in terms of various provisions of the Ordinance (e.g. s57(2) of the Ordinance (1986) to do so.

Comment: Most of the town planning schemes predate the Ordinance, but S141(4) of the Ordinance (1986) provides for the transition of schemes from the old Ordinance to the new.

As indicated earlier, the geographic applicability of town planning schemes was fairly limited; leaving large parts of the new wall-to-wall municipal areas unregulated other than by tribal laws, other old order laws, and the DFA (1995). Whereas some municipalities outside of the Province, but also subject to similar regulatory laws have extended the areas of their town planning schemes to cover their full jurisdictions, this has not been achieved in Limpopo. The reasons for this may relate to the applicability of other laws, for example R293 (1962) referred to later, to parts of municipal areas.

Regarding the maintenance of the scheme records, a fully updated set of schemes is not available at the Province, and this would seem to underline the gradual breaking down of the role of information custodianship by the Province.

f) Physical Planning Act No 88 of 1967 and No. 125 of 1991

Act 88 is widely used in Limpopo and the administration of s8, s9, s9A, and s12 was assigned to the Province by Proclamation R47, dated 3 August 1996.

The MEC is the decision maker. When objections are received the Townships Board established under the Ordinance, 1986, hears the matter before making a recommendation to the MEC.

S6 of Act 88 restricts land use change in “controlled areas”, s8 provides for permits to allow for land use change in “controlled areas”.

S4(2) of Act 125 allows MEC to require preparation of a regional structure plan for future development of a planning region, requiring consistency in regulations, etc.

Comment: This is used for permissions in areas outside town planning schemes and Province is the custodian for permits issued under the Act.

The validity of land use permits issued in terms of the Act is questionable as it should not apply to areas within municipal jurisdictions, which now cover 100% of the Province.

On the question of whether some of the Act 88 structure plans or guide plans may still be relevant in the Province, the indication from officials was that they were not and that only the spatial development frameworks prepared in terms of the Municipal Systems Act were recognised.

A similar view was held in respect of the Act 125 provision for “regional structure plans”, which has not been used in the Province, but appears inconsistent with new planning laws, especially since the introduction of the Municipal Systems Act.

g) National Environment Management Act No. 107 of 1998 (“NEMA”)

NEMA is closely linked to land use planning and listed land use activities have to be approved in terms of the Act.

The process for environmental authorizations for listed activities is a function fulfilled by the provincial Department of Economic Development, Environment and Tourism, which has full functional authority in terms of the Constitution over environmental matters.

The NEMA process generally affects the establishment of new townships or settlements in all types of application process (e.g. R293 (1962), Less Formal Township Establishment, Ordinance (1986) and DFA (1995), but can also affect land use applications in established areas. It is largely ineffectual where land invasion or informal settlement has occurred.

Comment: Environmental authorization is generally a long process (often 12 months), run in parallel with land use planning procedures. Where authorization is needed for land use approvals, it is often made a condition in the Conditions of Establishment for land development to proceed.

The parallel process of environmental approval duplicates much of the advertisement and information required for land use applications could be modified to better align with the latter.

h) Less Formal Township Establishment Act No. 113 of 1991 (“LeFTEA”)

This was largely assigned to the provinces under Proclamation R159 of 1994.

(Note: Section 3[5]-The Designation of Land, Sections 9[2], s9[3], 26[2] and 26[3]- Registration of Ownership, and Sections 19[6A] and 19[7]- the Establishment of a Township on behalf of the Administrator, of the Act have not been assigned to the provinces [Oranje, 1999].)

The Act provides for three chapters:

Chapter 1 for Less Formal Settlement, Chapter 2 for Less Formal Township Establishment, and Chapter 3 for Settlement by Indigenous Tribes.

S3 and s10 provide for land designation, and s4 and s11 for settlement and township development respectively and for related matters, including regulating the use of land by traditional communities for communal forms of residential settlement.

S6 and s17 allow for settlement and township established in terms of the Act to be deemed to be “a township established in accordance with the law governing the establishment of townships in force in the area in which the designated land is situated”, allowing it to be dealt with in terms of the Ordinance (1986).

Comment: Although the Act offers a legitimate option for township establishment, it is not being used by the Department of Local Government and Housing. The indications from officials are that the requirement for s3 and s10 land designation by the MEC prior to the application process,

and short comings in its procedure as regards advertisement, technical information, environmental approval and the availability of other options have caused the shift.

The municipal preference is that the Ordinance of 1986 should be used for township establishment and not LeFTEA.

i) Removal of Restrictions Act No. 84 of 1967 (“RoRA”)

The Act has been assigned to the provinces in terms of Proclamation R160 of 1994.

S5 applies to the removal of restrictive title conditions and allows for simultaneous rezoning too.

The Premier may alter, suspend or remove, permanently or temporarily, conditionally or unconditionally, restrictions or obligations registered against the title deed of land that relate to subdivision, or the purpose for which the land may be used, or requirements to be observed in connection with the development of buildings on the land.

Criteria for removal/amendment include that it should be in the interest of the development of the area, in the public interest, etc.

Comment: Permissions are dealt with by the MEC, with the Townships Board dealing with hearings in the case of objections. It performs an important role in allowing for the alignment of zoning and title conditions to be effected. Alternatives to the Act include the removal of the restrictions by agreement with affected interested parties, or by Court Order.

j) National Heritage Resources Act No. 25 of 1999

According to the South African Heritage Resources Agency web site, there is a Limpopo Provincial Heritage Agency in Polokwane.

The Act seeks to protect heritage resources in the province, including afforded to buildings of 60 years or older and heritage impact studies.

S31 requires planning authorities to take account of heritage resources in the compilation of its town planning schemes and spatial plans, while s38 specifies that applicants for certain categories of development (e.g. exceeding 5000m² in extent) must advise the responsible heritage authority of the intended development and that it may require a heritage impact assessment report .

Comment: The heritage aspect of land use development affects areas being developed for township purposes, particularly stone-age villages and grave yards. Heritage impact studies are undertaken as part of the land development application process (Buys P., pers. comm., 05 August 2011). It is not clear whether these provisions are being applied in the Province.

k) Subdivision of Agricultural Land Act No. 70 of 1970

Section 3 prohibits the subdivision of agricultural land unless without the consent of the Minister of Agriculture.

The Repeal Act No. 64 of 1998, which would repeal the Act, has not been signed into law.

The Act does not apply to Agricultural Holdings, former “old” municipal areas, South African Development Trust Land. Oranje M indicates that “potentially three different versions of the Act are in operation in Venda, Lebowa, Gazankulu, and KwaNdebele”, but notes that as these areas contain large tracts of Trust land it would only be of minor significance there.

Comment: It is understood that applications are submitted directly to the National Department for approval, and that there are significant delays in this regard.

Enquiries about the possibility of delegated authority for decision making by Province have not been successful. The further possibility of defining an agreed urban edge in the applicable spatial development frameworks – for the purposes of waiving the Act’s requirement for Ministerial approval where appropriate - has been mooted.

l) Agricultural Holdings (Transvaal) Registration Act No. 22 of 1919

Excisions of holdings from the provisions of the Act (i.e. cancellation of the agricultural holding certificate, and reversion to a farm portion) in terms of s6 of the Act are approved by the National Minister of Public Works.

Comment: The title deeds of holdings contain significant limitations on the land uses permitted and the extent of subdivisions. The consent to excise the holding removes the restrictions. It is generally required for township applications, prior to the opening of the townships registers, and can cause a delay in this regard.

m) Local Government Ordinance No. 17 of 1939

S67 provides for Municipal road closures.

S68 provides for Municipal park closures.

Comment: These approvals are normally the sole discretion of the municipality. (It is noted that applications for park closures are also received by Province, probably in former Less Formal Township Establishment and Black Community Development Act townships.)

n) Division of Land Ordinance No. 20 of 1986

The Ordinance was assigned to Province by proclamation No. 109 of 1994.

The Act only applies to certain categories of land as defined in s2. Section 3 allows Province to “authorise” municipalities to approve land division applications in terms of Chapter IV, usually for large subdivisions, and areas without formal engineering services, and where the application does not constitute township establishment.

Comment: The role of provincial government is similar to that of the authorised municipalities in areas outside the municipal jurisdiction (which would no longer pertain in view of the new municipal demarcations) and to deal with appeals against municipal decisions.

o) Black Communities Development Act No. 4 of 1984 and Land Use Regulations

Chapters VI and VIA are still valid, the rest of the Act having been repealed. These provide existing leaseholders certain security of rights until the township register is opened and full ownership can be conferred.

Administration of sections 52 (leasehold) and 57B (registration of ownership) have been assigned to Province.

The Township and Land Use Regulation R1897/1986 (Annexure F) was assigned to province by Proclamation R163 of 1994. It is used for land use management in townships established in terms of the Act.

Comment: There are townships established in the Province under this Act. It is not clear how they have been assimilated into the dominant land use systems, but the conditions of

establishment provided for the assimilation of the rights into a town planning scheme when such scheme was prepared for the area.

The Annexure F regulations are a simplified set of town planning scheme clauses, and give meaning to the categories of land use depicted on the relevant layout plan for the township. Their assimilation into more complex town planning schemes with wider diversities of land use controls can give rise to conflicts.

S15 of the Upgrading of Land Tenure Act No. 112 of 1991 provides for formalization of townships where the general plans have been approved, and the registration of full ownership.

p) Deeds Registries Act No. 47 of 1937

The Act deals with the opening of township registers, ownership, servitudes and other rights to land.

Comment: There is a provincial intermediary function provided by the Deeds Section of Land Use Management, Deeds and Statutory Boards, which appears to be unique to Limpopo (Lindeque, H. pers. Comm. 05 August 2011). It appears to date back to the previous political dispensation (see table 1).

q) Sectional Title Act No. 95 of 1997

Alternative form of ownership. Sectional Schemes must comply with zoning.

Comment: Sectional Schemes must comply with land use zoning and approved building plans

Administration of Land Survey Act No. 8 of 1997

Regulates the surveying of land parcels for registration and related development purposes.

r) Local Government Municipal Systems Act No. 32 of 2000

The Act requires that every municipality prepare an Integrated Development Plan.

S26(e) requires that an integrated development plan include a spatial development framework and guidelines for land use management.

S32 provides for Province to comment on municipal spatial development frameworks.

S35 provides for an approved spatial development framework to prevail over any plan defined by the Physical Planning Act No. 125 of 1991.

S62 provides for appeals against decisions taken by any political structure, official. There is no record of any appeal lodged under this section.

Comment: The consideration of land use applications by the provincial statutory boards is affected by these “policies”.

It is understood that the Province is promoting a move towards land use management schemes as contained in the Act, with 8 municipalities involved in this exercise. (Investigations by Ekurhuleni [Gauteng] and Mbombela [Mpumalanga] into the use of the MSA [2000] for the establishment of new Land Use Management Schemes for their areas of jurisdiction have not been followed through due to legal technicalities.)

s) Development Facilitation Act No. 67 of 1995 (“DFA”)

The Act provides for alternative procedures for land use development through a provincial Development Tribunal. In addition to a number of innovative aspects, it provides a set of nationally applicable normative principles that are used to guide development decisions and forward planning.

Although the Tribunal has the power to suspend the operation of a wide range of laws that impact on land use (such as NEMA, Subdivision of Agricultural Land Act and agricultural holding excisions), it has been inclined to require that these be addressed separately before final approval is forthcoming.

Comment: The Act is seen by applicants as a vital alternative to the existing land use application procedures in Limpopo, guaranteeing a relatively fast and objective outcome. It is used where objections to applications are likely, where the development is of high commercial value, and in areas where there is legal uncertainty about the legal process to follow.

Its use is not encouraged by municipalities as the timeframes and requirements clash with the established systems and their municipal planning mandate. Its use is also opposed by tribal leaders who view it as restricting their authority.

As in the case of other provincially-administered land use regulatory acts, the incorporation of approvals into the municipal land use management system has proved difficult, although services provision in consultation with municipalities is a condition usually imposed in approvals.

Its use will effectively discontinue by 18 June 2012 unless an extension of time is granted by the Constitutional Court.

t) Upgrading of Land Tenure Rights No. 112 of 1991

The administration of the Act is assigned to the Province.

It provides, amongst other things, for upgrades of tenure to ownership, transfer of land, and protection of rights granted in respect of traditional land.

The process followed depends on the nature and legality of tenure in the settlement (deeds of grant, permissions to occupy, or other forms of tenure and their legality as per Schedules 1 and 2) and the stage reached in the settlement establishment process (e.g. is there a general plan?).

Schedule 1 rights include Deeds of Grant or rights of leasehold as defined in Regulation 1 of Proclamation R293 (1962), any quitrent title as defined in Regulation 1 of Proclamation R188 (1969), any right to leasehold as defined in the Black Communities Development Act, and any right to leasehold as set out in the Conversion of Certain Rights to Leasehold Act No. 1 of 1988), deeds of grant or rights to leasehold as set out in Regulation 1.1 of the Regulations for Land Tenure in Towns, 1988, deeds of grant or rights of leasehold as set out in the Regulations for the disposal of South African Development Trust Land, 1988.

Schedule 2 rights include permission granted to occupy an allotment in terms of Regulation 5(1) of the Irrigation Scheme Control Regulations of 1963, permission granted to occupy an allotment in terms of Proclamation R188 (1969), any right of occupation granted to any registered occupier as defined in Section 1 of the Rural Areas Act (House of Representatives) Act No. 9 of 1987, and any right to occupy tribal land granted under indigenous law or tribal custom.

Comment: Province undertakes a large number of tenure upgrades in townships and rural settlements.

u) Mineral and Petroleum Resources Act No. 28 of 2002

The Act made the State the custodian of mineral resources as of 1 May 2004, repealing the Minerals Act of 1991.

All old order rights, including mining rights, surface right permits and industrial stand grants had to be renewed within a given time, otherwise they lapsed.

Consent from the Department of Mineral Resources and Energy, or the holders of valid mineral rights, is required when applying for land development rights.

Where it is involved in land use approvals, Province will require approval from the Department for applications for township establishment, filling stations and other uses. The reverse is not necessarily true, where prospecting or mining rights may be granted by the Department of Mineral Resources and Energy as there appears to be no mechanism or obligation to consult with the affected municipality or Province or refer to its spatial planning frameworks or land use management schemes.

Comment: The matter was not raised by the officials interviewed, but its importance as a parallel approval required for the development of any land is cannot be overlooked.

Notwithstanding the lack of prescribed consultation aspect mentioned above, the relevance of municipal approval of land uses including mineral extraction, and particularly where zonings apply within municipal jurisdictions, has been underlined by litigation between the Cape Town City Council and Maccsands and in which judgment is expected shortly.

v) National Land Transportation Transition Act No. 22 of 2000

S22 requires the preparation of a land transport framework, which must include the spatial plans for the province, and, once approved, s29 requires public transport input and approval for any substantial change in land use.

Comment: Not mentioned in interview, but impacts directly on land use plans.

w) Black Administration Act No. 38 of 1927 and Land Use and Planning Regulations

Regulations for the Administration and Control of Towns in Black Areas, Proclamation R293 of 1962, applies to urban development (township development, granting and registration of tenure, issuing of building permits, etc) in former homelands and self-governing territories, sometimes with specific changes as indicated below. Annexure F from the Black Communities

Development Act of 1984 was assigned to the province in 1994 and is used for land use management in these areas.

The Land Use Regulations, Proclamation R188 (1969), applies to rural land tenure and development where lesser requirements for survey and registration is required, making it more difficult to upgrade tenure and formalize developments in these areas (Oranje, 1999).

Proclamation R1886/90 relates to township establishment and R1888/90 to the preparation of town planning schemes. These apply to “scheduled” and “released” areas in former homelands and self-governing territories (Oranje, 2009).

Comment: The formalization of settlements and upgrading of land tenure rights requires cooperation between spheres of government, traditional authorities and the affected communities.

The nature of the tenure in existing settlements is important for formalization (i.e. Deeds of Grant, Permissions to Occupy, or any other form), as well as compliance with certain basic developmental and cadastral requirements. The content of applications does not match “normal” requirements, but province has adapted its requirements to address these shortcomings.

x) Homeland Laws: Venda: Land Control Act 16 of 1986 and Venda Proclamation No. 45 of 1990, Lebowa, Gazankulu

The Venda Proclamation 45 was assigned to Province in terms of Government Notice 1401/1994 dated 9 September 1994. R188 (1969) was repealed by this proclamation.

It includes Regulation R17 approved on 10 April 1992 (Permissions to Occupy), R23 approved on 4 September 1992 (township establishment), and R16 approved on 10 April 1992 (registration of title). It is used as a “type of R293 (1962)” in the former homeland (Oranje, 1999).

Lebowa has a “local” version of R293 (1962) and R188 (1969)

Gazankulu has a “local” version of R293 (1962) and R188 (1969) (Oranje, 1999).

Comment: The province appears most familiar with the provisions of R293 (1962) and the Venda proclamation, but not the “local” versions of R293 (1962) and R188 (1969).

y) Advertising on Roads and Ribbon Development Act No. 21 of 1940

S9-s11 affect access, subdivision, and advertising, and imposes building lines along identified public roads.

The Act has been assigned to the Province in terms of Proclamation 23 (Government Gazette No 16340). The MEC fulfils the role of the controlling authority

Comment: Compliance with the Act is made a condition in the approvals of rezonings and townships.

z) National Water Act No. 36 of 1998

Section 144 stipulates that “for the purposes of ensuring that all persons who might be affected have access to information regarding potential flood hazards, no person may establish a township unless the layout plan shows, in a form acceptable to the local authority concerned, lines indicating the maximum level likely to be reached by floodwaters on average once in every 100 years

Comment: Floodlines certified by a professional engineer must be reflected on layout plans and on any land applications contiguous to water courses.

aa) Communal Land Rights Act No. 11 of 2004

The Act aims to address land use management and relations between traditional and elected authorities in the former homeland areas.

Comment: The provisions of the Act were successfully challenged on Constitutional grounds and have been suspended. There remains a need to address this unresolved aspect of land use management and customary laws that now are relevant in many municipal areas.

bb) Land Administration Act No. 2 of 1995

This Act provides for the delegation of powers and the assignment of the administration of laws regarding land matters to the provinces, provides for the creation of uniform land legislation, and provides for matters incidental thereto.

Comment: The Act pertains to proclaimed areas including former homelands, areas for which a legislative assembly was established in terms of the Self-governing territories Act of 1971, and any area that was referred to in s25 of the Black Administration Act 1927, or section 21 of the Development Trust and Land Act, 1936, and which is situated outside the two aforementioned areas.

Other Acts mentioned in the interview (Dali, R 2011, Pers. Comm., 8 June) were the Interim Protection of Informal Land Rights Act No. 31 of 1996, and the Communal Property Associations Act No. 28 of 1996. It was indicated that the Department of Rural Development and Land Reform uses these extensively for land reform projects.

As can be seen from the description of the laws and their applications, the complexity is heightened by the limited geographic applicability of certain laws, the new reality of wall-to-wall municipal areas, and the differing needs of communities in urban, traditional, and rural areas. It is further complicated by the institutional capacity constraints at most levels of government.

From the above, it is apparent that the most important laws for land use planning are the following:

2.2.1. The Most Important Laws for Land Use Planning

a) Forward Spatial Planning

i) Local Government: Municipal Systems Act No. 32 of 2000

Required the preparation of municipal integrated development plans a spatial development frameworks.

Chapter 5 requires municipalities to adopt Integrated Development Plans (IDPs) and Spatial Development Frameworks (SDFs) to provide for the forward planning and matching allocation of resources and budgets to achieve the desired developmental municipal vision, with an emphasis on the most critical development and internal transformation needs. It requires the development strategies to be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality. It also requires a spatial development framework that must include basic guidelines for the land use management system for the municipality.

The IDPs and SDFs have been prepared to various degrees of success by all the municipalities in Limpopo. The province has an approved Spatial Development Framework (2007), although not in terms of the MSA (2000). It is not clear whether the alignment with sectoral plans and policies has been achieved, nor whether the current IDPs are adequately realistic, but there is provision for their regular updating.

It is also not clear whether there have been significant attempts to address the land use management component of the SDFs, particularly in view of the currently used Ordinance of 1986 town planning schemes and their general dominance of formal urban areas.

It is understood from the officials interviewed that all previous Land Development Objectives (DFA, 1995) and Physical Planning Act (1991) Guide Plans appear to have fallen into disuse, although not formally withdrawn.

b) Land use management and development planning

i) The Town-planning and Townships Ordinance No.15 of 1986

Provides guidance as to the purpose of town planning, the regulation of land use by town planning schemes (including the content and application procedures), the establishment of townships, the roles and functions of statutory boards.

Most municipalities are “authorized” by Province in terms of the s2 of the Ordinance of 1986 and can consider, approve, or refuse land use applications.

Province, and more specifically the Department of Local Government and Housing, provides an oversight role and deals with appeals lodged against local authority performance (undue delay in the consideration of applications) and appeals on the grounds of merit.

ii) The Removal of Restrictions Act No. 84 of 1967

Assigned to the Province, and allows for the removal of restrictive conditions registered against the title deed of land that relate to the establishment of townships or to town planning, subdivision, or the purpose for which the land may be used, or requirements to be observed in connection with the development of buildings on the land. It allows for simultaneous rezoning too.

iii) The Development Facilitation Act No. 67 of 1995

Provides wide ranging options for land use applications particularly where there is uncertainty about the legality of the process being used, and where multiple legal requirements must be addressed (such as subdivisions, removal of restrictions, and rezonings). Its use as an alternative tends to mask the shortcomings of the fragmented and slow land use system. The Constitutional Court ruling (2010) on the validity of Chapters V and VI has not diminished its use to-date, but its applicability is likely to terminate in June 2011.

iv) Black Administration Act No 38 of 1927 and Land Use and Planning Regulations

Used for the development of subsidized housing schemes by the Province, particularly in tribal areas. The indications are that most of these settlements in tribal areas of Limpopo are undertaken in terms of s4 of R293 (1962), and the Venda Land Affairs Proclamation 45 of 1990.

In conclusion, although only primary legislation is discussed above, the legal situation relevant to land use matters is much more complex with a layers of diversity and different authorities involved. These aspects and the legacy of past approvals from laws such as LeFTEA (1991), R293 (1962), and the Black Communities Development Act still impacting on development and land use tenure are part of the scope of matters that need to be addressed in the formulation of new provincial land use laws, if there is to be an effective outcome.

2.3. Description of the new Provincial Legislation

A provincial law reform process, including a review of land use planning, was undertaken in the late 1990s. It is understood from one of the consultants involved in the process (Dekker, L 2011, telephonic comm., 28 July) that it was not an attempt to draft a new Limpopo land use management bill, but rather to align existing provincial laws.

It is understood (Dekker, L 2011, telephonic comm., 28 July) that the Province is supporting the formulation of new generation Land Use Management Schemes for the Limpopo municipalities, particularly where there are no land use regulations in place. There are no details of this intervention to assist municipalities.

It is likely that the prospect of new national Spatial Planning and Land Use legislation will revive interest in preparing a new provincial bill.

2.4. Description of Implementation of Provincial Planning Laws

2.4.1. Institutional Responsibilities

The main provincial structure for land use management and spatial planning is the Directorate of Local Government, and its sub-directorates of Spatial and Human Settlement Planning (Mr R Dali), and Land Use Management, Deeds and Statutory Boards (Ms P Nake).

a) Directorate of Local Government

i) Decision-making

- The Member of Executive Committee (MEC) is responsible for matters referred to him/her by the Limpopo Townships Board in terms of s59, s104, s 124 and s139 of the Ordinance, 1986, s7 of the Removal of Restrictions Act, 1967, permissions in terms of the Physical Planning Act 1967, R293 (1962), R188 (1969), and LeFTEA;
- The Limpopo Townships Board provides an advisory function to the MEC and hears matters where there are objections, before making recommendations to the MEC;
- The Services Appeal Board functions are undertaken by the Townships Board;
- The Limpopo Development Tribunal responsible for applications under the Development Facilitation Act No. 67 of 1995; and
- The Limpopo Development Appeal Tribunal responsible for appeals under the Development Facilitation Act No. 67 of 1995.

ii) Staff complement (Lindeque, H 2011, pers. comm. 8 June 2011)

- Spatial Planning and Human Settlement Planning has 13 planners: 13 (including Mr P Daswa and Mr H Lindeque), 3 of whom are assigned to Land Use Management.
- Land Use Management, Deeds and Statutory Boards: This includes

Land Use Management, staffed by 4 planners, of which 2 are permanent staff, and the Statutory Boards, that comprise the following:

The Townships Board: 9 members

The DFA Tribunal:	20 members
DFA Appeal Tribunal:	5 members
Administration:	A registrar, a deputy registrar, and a Designated Officer

The annual provincial departmental report, 2009-2010, indicates a high number of vacancies in the structure.

2.4.2. Implementation Aspects

In a general sense, land use in Limpopo contains formal and “informal” elements, notwithstanding the applicability of land use planning and management laws throughout the Province.

With regard to the formal component, Limpopo’s land use management system relies on the Provincial Department of Local Government and Housing, local municipalities, and traditional authorities for its implementation.

As indicated earlier in this document, the main provincial land use laws used are the Ordinance (1986) and the DFA (1995), R293, and Venda Proclamation 45 of 1990.

The main types of application include the establishment of townships, land development areas, the rezoning of land from one use to another, the simultaneous removal of restrictions and rezoning of land, the subdivision of land, the consolidation of land, consent uses in terms of existing land use rights and relaxations of various development controls (e.g. height, parking, and building lines) established through town planning schemes.

The Ordinance (1986) provides for applications for new development rights or variances to existing rights, which are lodged with the municipality in terms the relevant sections of the Ordinance and reasons for the proposal and supporting documents as required must be provided by the applicant. There is no process to return what might be considered an incomplete application. The application is usually advertised for public comment and is circulated to municipal and government departments and stakeholders for comment. Thereafter the responsible administrative municipal structure or department evaluates the application in terms of the criteria prescribed in the relevant law and municipal spatial frameworks and makes a recommendation to the decision-making structure or Council Committee on whether to approve or refuse the application, together with proposed conditions that are intended to regulate the use and protect the amenity of other land uses in the vicinity. Once the decision has been made, the

applicant is advised accordingly and takes steps to comply with any conditions imposed before the permission may be exercised. An example of the process, relating to township establishment, is set out in Annexure 1.

The DFA is an alternative application procedure that relies on the administrative capacity of dedicated staff in the roles of Designated Officer, Registrar and the specially constituted Development Tribunal to respond within the stringent timeframes. With regard to the special features of the DFA some notable features are:

- The response times that are very short with, for instance, a requirement for pre-hearing and hearing dates to be between 80 and 120 days from the date of submission to the Designated Officer, and notice of these hearings being given in the prescribed manner at least 65 days prior to the hearing dates.
- The information requirements are stringent and wide-ranging and require specialist input on all aspects of the application, including engineering, environmental and social aspects.
- The provision for a pre-hearing conference to ensure that the necessary aspects have been addressed prior to the hearing.
- The composition of the Development Tribunal, with representatives from government and the private sector.

The post-decision procedures have not proven to be easily managed, as there is usually a need to involve municipalities in the final stages of compliance with the Development Tribunal decision, particularly in respect of services agreements and the incorporation of the approval into the respective Ordinance Town Planning Scheme, as well as the need for parallel approvals in terms of NEMA and Minerals and Energy. The DFA does not provide for the lapsing of matters awaiting a decision, but does have lapsing clauses if certain conditions imposed in terms of a decision are not met (i.e. 5 months for the submission of a General Plan to the Surveyor General). Condonation can also be sought from the DFA Tribunal for failure to comply with instructions or conditions imposed by the Tribunal, and there is provision for appeals to a specially constituted Appeal Tribunal. The DFA process is set out in Annexure 2.

The R293 (1962) and Venda Proclamation 45 (1990) procedures are determined by the Department of Local Government and Housing that involves an evaluation of the site and its suitability for development from legal services, geotechnical and environmental points of view, followed by the submission of the required layout plan and motivation to both the Department and the local municipality. The layout plan must be signed by the land surveyor, town planner,

professional engineer and tribal authority and comments must be obtained from the local municipality, together with environmental authorization and Department of Minerals' consent, before the application is approved by the Department and the General Plan can be submitted for approval.

2.4.3. Implementation and other related legislation

The wider legal requirements for applications (i.e. parallel approvals and comments) are addressed by requiring permissions or comments from the affected parties (e.g. environmental authorizations, and Department of Mineral and Energy consent) before approvals are effective.

The most important parallel planning-related legislation would include the following, which have been described in the earlier.

a) The Subdivision of Agricultural Land Act No. 70 of 1970

Requires the Minister of Agriculture to authorise subdivision of land outside the pre-2000 built-up areas. The process follows the land use approval, and impacts on the opening of township registers, as the Registrar of Deeds requires proof of compliance with the Act. The approvals are now applied for through an electronic process.

b) The Mineral and Petroleum Resources Development Act No. 28 of 2002

Requires the Department of Minerals and Energy to issue a letter consenting to the establishment of a township before the municipality will issue the certificate to allow the register to be opened. The application is referred to the Department at the time of lodging with the municipality. The permission is generally subject to a five-year applicability clause, failing which a further application must be lodged.

c) The National Environmental Management Act No. 107 of 1998

Requires the provincial Department of Economic Development, Environment and Tourism, to authorise the land use application where is a so-called listed activity in terms of the regulations to the Act. The authorization requires an application to be lodged by a suitably qualified environmental practitioner, culminating in a record of decision/authorisation that can stipulate requirements that include land use management controls and environmental measures to be taken to mitigate the impacts of the proposed development. Conflicting conditions imposed by the Department and the land use regulator can necessitate appeals or amendments to the authorization. The authorization is generally subject to a two- to five-year applicability clause, which if not exercised requires extension of time applications and lapsing if the extensions are

not timeously lodged. The process tends to duplicate the land use planning process in terms of public participation, and to rely heavily on the planning application for clarification of potential impacts. However, as the process is independent and not coordinated with the land use application, it can result in fruitless expenditure if either application should fail.

d) The Advertising on Roads and Ribbon Development Act No. 21 of 1940

Requires an application to the controlling authority (the MEC with input from Limpopo Roads Agency) for permission. The provisions of the Act and the requirements of the controlling authority are generally incorporated into the land use application considerations, and the exercise is usually a compliance issue.

e) The Agricultural Holdings (Transvaal) Registration Act No. 22 of 1919

Requires excisions, or cancellation of the agricultural holdings certificate in terms of s6, to be approved before the holding is used for a purpose contrary to the restrictive conditions, are currently approved by the National Minister of Public Works.

3.0. Performance of Provincial Legislation

The following information is intended to provide an idea of the type and number of applications/appeals received by Province in 2010:

a) Applications received 2010

Table 1: Applications and Appeals received by Province in 2010

Applications received 2010	
DFA (1995)	54
Business Rights/Change of Land Use Physical Planning Act 88 of 1967	11
Roads and Ribbon Development Act No. 21 of 1940	44
Township Establishment Town Planning and Townships Ordinance No.15 of 1986	13
Removal of Restrictions Removal of Restrictions Act No. 84 of 1967	135
Consent Title Deeds	19
Excision	8

Agricultural Holdings Registration Act No. 22 of 1919	
Town Planning and Township Ordinance No. 15 of 1986 Townships	13
Tenure Upgrading Upgrading of Land Tenure Act No. 112 of 1991	3 000
Less formal township establishment Less Formal Township Establishment Act No. 113 of 1991 Section 10	0
Less formal township establishment Less Formal Township Establishment Act No. 113 of 1991 Section 11	0
Subdivision and Rezoning in towns Black Communities Development Act No. 4 of 1984, R293 (1962), R 188, 45 (Venda Act)	1339
Exhumation of Graves Ordinance No. 7 of 1925	2
Parks closure Section 68 Local Government Ordinance No. 17 of 1939	9

The table shows the range of applications being considered by the Province, and notably the fact that LeFTEA is not currently in use while R293 (1962) is a significant application type. The DFA (1995) is clearly a significant option in Limpopo, with more current applications than in Gauteng.

The main reasons for appeals include unreasonable delays at the municipal level, and differences between the applicant and municipality about the merits of an application. Most appeals are in established urban areas, particularly in Polokwane (Lindeque, H 2011, pers. comm. 8 June 2011).

b) Facilities

The infrastructure available to the planners in the Provincial Department is adequate in their opinion (Lindeque, H 2011, pers. comm. 8 June 2011).

The application tracking system is a manual filing system.

Regarding information availability, it appears that Province does not have a full record of land use management schemes or a complete record of amendments and planning permissions in the province.

4.0. Stakeholder Views of Provincial Planning Legislation

4.1. What works well in the current legislation

a) Provincial view

On the forward planning aspects, the Municipal Systems Act (2000) has required the preparation of municipal spatial development frameworks, which provide valuable guidelines for future development opportunities. The approved Limpopo Spatial Development Framework (2007), a component of the provincial growth and management strategy, enables Province to respond in a consistent way in terms of s32 of the Act (MSA, 2000) to municipal submissions of their municipal spatial development frameworks.

In the urban parts of “established” municipalities, the Ordinance (1986) appears to provide the best and most familiar processes. Its procedures have been tested over a long period, have become accepted and understood by the development fraternity, and fit the municipal and provincial land use management structures.

The Ordinance (1986) addresses the requirements for applications to be made, the procedures and the decision-making entities, and provide a framework for town planning regulations. However, it appears to be failing to resolve controversial applications, and this has promoted a reliance on the DFA (1995) in cases where opposition is anticipated.

The DFA (1995) is seen as a necessary alternative to the Ordinance (1986) and has applicability throughout the province. The Tribunal appears to be functioning well and has a high level of applications to consider.

Where “newer” municipalities are concerned, and in the rural areas, the use of the DFA (1995), R293 (1962) and customary laws are the main options for regulating settlement.

i) Polokwane:

Polokwane is an authorized municipality in terms of the new Ordinance, 1986. It covers approximately 3 775km², and roughly 71% of its residents live in rural areas.

It addresses forward planning in terms of its approved Spatial Development Framework (2007) and deals with the technical and legal aspects of appropriate development of townships and land, regulation of land use in terms of the Polokwane/Perskebut Town Planning Scheme (2007) (which only covers the former Pietersburg/Seshego area, a small part of the municipal area), building plan approvals and facilitating property transfers, in terms of the Ordinance, 1986.

The approvals for land uses outside the town planning scheme area are addressed by Province, with comments from the municipality. The Province also addresses appeals, DFA (1995) applications, “non-Ordinance” township applications through its statutory boards. Communication between the Province and Polokwane is good, possibly fostered by proximity of the respective offices.

The sharing of information to ensure a composite record of land use decisions at the provincial level is not formally done, even though it is required in Ordinance, 1986, matters. There is a backlog of over 1000 amendment schemes in Polokwane that have not been assimilated into the town planning scheme. There is currently no electronic database of land use information at the municipality, and a manual filing and recording system is used.

The Council’s land use decision making structures are aligned to the procedures found in the Ordinance, 1986. The land use function is fulfilled by the Land Use Management Committee, comprising of Councillors and advised by officials. There are no delegations to senior officials other than certain consent uses, building line relaxations, subdivision and consolidations.

The Spatial Planning and Land Use Management Division, a part of the Planning and Development Department, is responsible for spatial planning, development control, and enforcement. It comprises two senior planning professionals, two planners, and two assistants.

The Council is pursuing a wall-to-wall town planning scheme (SDF, 2007) in terms of the Ordinance, 1986, which is intended for completion in 2012. Challenges include the limited available information on land uses, the lack of mapping, the need for transitional introduction, the linkages with the spatial development framework, and the diverse needs of different parts of the municipal area.

The timeframe for decisions on rezoning and similar applications is generally between 6-9 months, with townships taking about 12-18 months (Lindeque, H 2011, pers. comm. 8 June 2011).

4.2. What does not work well

a) Provincial view

The municipal SDFs prepared under the Municipal Systems Act (2000) have tended to have an urban bias, and far more work is needed to relate planning and land use management schemes to the local circumstances, particularly in rural/traditional areas. In addition, the spatial planning has not been matched with infrastructure investment and development spending, while monitoring of progress towards developmental goals requires better information and systems.

Better and integrated decision making between the provincial and local spheres of government, including traditional structures, is essential to achieving the sustainability sought by the “Breaking New Ground” policy in addressing the low cost housing needs in the Province.

Some old order laws, such as R293 (1962), while providing a valuable option for land use development have shortcomings that have had to be addressed by practical adjustments to the information required by the authorities for decision making. These laws do not match the structures at municipalities, fail to integrate the outcomes with the planning systems at local level, are outdated, and do not involve interested and affected parties. These need to be administered in a way that is more appropriate to future municipal land use management until they can be replaced by more appropriate laws. The indication is that a significant component of the Province’s work is the issuing of permits for tenure upgrades in older settlements established in this way.

The diversity of laws of similar planning intent, but with different approving authorities, requires specialized knowledge and insight on the part of the implementing authorities for a reasonable, if not equitable, outcome. The potential for confusion is significant and can result in delays, wrong outcomes, and poor integration with municipal systems, often to the detriment of communities that require assistance. Over time the accumulation of applications not integrated with the formal systems of land use registration, particularly low income housing settlements, will be detrimental to the functioning of municipalities.

Although the Ordinance,(1986) is still the dominant land use planning tool in the former urban areas, the Province is no longer receiving records of planning approvals from municipalities, and vice versa. While the absence of a full history of planning approvals is understandable given the diversity of sources from former homelands, municipal and provincial structures, its importance to the administrative capacity of the municipalities, the incorporation of rights into new legal systems and the determination of land values for rates purposes, is substantial.

The timeframes for circulation of applications are not fixed in law, other than in the DFA (1995), and the consequence is general delay in the processing of applications. According to a local consultant (Pieterse, T 2011, pers. comm. 8 June 2011) this is particularly relevant where applications under the Ordinance (1986) are opposed, and final decisions are not provided by the municipality.

While the DFA (1995) is a vital alternative to the Ordinance (1986), particularly where municipal capacity is limited in terms of trained planning and engineering officials, the achievement of a formal decision does not obviate the need for municipal input on matters of supporting engineering services and compliance with other external legal requirements to conclude the application. The post-approval phase can be frustrating in terms of the dependence on other parties and institutions to achieve a section 38 certificate from the Designated Officer.

If the use of the DFA (1995) were to be discontinued, steps need to be instituted to conclude outstanding applications (and future amendments) within reasonable timeframes as the Act does not provide for their lapsing. Unresolved DFA (1995) applications could become a further administrative difficulty in a new legal system.

As indicated earlier, there is a high number of vacancies in the departmental structure. The staffing and administrative capacity of the officials responsible for the provincial planning of Limpopo will need to be assessed in the light of any new planning laws and the role of province in the future.

The promotion of a pro-active development facilitation culture in provincial government, rather than a bureaucratic control culture, will depend on the training and experience of staff in the future.

There is inadequate monitoring and follow-up on compliance with conditions imposed, as law enforcement is lacking and under-capacitated. The cumulative impacts of land use decisions

need to be quantified to determine whether planning objectives set out at national, provincial and local level are being achieved.

i) Polokwane

It is apparent from the difficulty of obtaining an interview for this study and the limited availability of staff that the land use management capacity at Polokwane is restricted.

The current municipal system functions best in the established urban area, and is focused on Ordinance (1986) and related town planning schemes applicable in the municipality as can be seen from the table below (Vele, 2011, telephonic comm., 14 July). Where there are applications outside of the area described above, the municipal function requires augmentation by Province, particularly in the rural and tribal areas.

Table 2: Applications received by Polokwane in 2010

Applications received 2010	
DFA (1995) (for comment)	4
Rezoning Town Planning and Townships Ordinance 15 of 1986	66
Township Establishment Town Planning and Townships Ordinance 15 of 1986	10
Subdivision/consolidation TP Scheme/ Ordinance	41
Consent TP Scheme	114

It is not clear whether the proposed Polokwane wall-to-wall land use management scheme proposed in terms of the SDF, 2007, will improve the land use administrative capacity of the municipality, as virtually all permissions outside the current scheme boundaries will continue to be handled by Province, unless a new national or provincial land use management law replaces the current ones. This situation is almost certainly unconstitutional in the light of the 2010 DFA judgment of the Constitutional Court.

As much of the land use management does not occur at municipal level, and in the light of the municipal planning mandate, there is a clear need to update laws to complement the municipal structures, address the extensive nature of the municipality, provide better spatial planning guidance, assist with funding for infrastructural and supporting initiatives, and so on if it is to achieve its development aims and transformation needs.

4.3. What aspects of each law should be changed

a) Provincial view

Whereas it may be possible to amend the existing laws to bring about an adequate alignment, it would be preferable that the legal system is improved holistically rather than piecemeal.

The laws should be rationalized so that a single law, or suite of aligned laws, addresses planning and land use regulation. The plethora of laws dealing with the land use management in a divided manner must be repealed, and the peculiarities of, for instance, rural and urban needs should be addressed as part an integrated approach.

The provincial law on land use planning must include clarity on the roles of different spheres of government, future planning, regulatory planning, time frames, clear decision making structures, and realistic assumptions about what can be achieved given available capacity. New laws must assimilate existing approvals and applications into the new legal framework. The likelihood of an effective one-step transition from one regime to a newer one is low. A structured transition with added capacity at provincial and municipal spheres should be introduced.

i) Polokwane:

The practicalities of land use administration in the new, extensive, “wall-to-wall” municipalities need to be considered in the formulation of new planning laws, particularly in those areas outside the urban core.

4.4. What aspects need to be addressed by National legislation

a) Provincial view

This limited overview of provincial and local land use laws shows that the system is succumbing to uncertainty about the procedures, the applicability of laws and local arrangements.

National Law should provide the framework for consistency about the content of provincial law, but allow for the diversity that occurs at provincial and local level.

It should provide also provide for the repeal and succession of existing acts that are related to land use planning, particularly any national acts such as Less Formal Township establishment Act (1991), the Black Administration Act (1927).

b) Polokwane

A national framework law would be beneficial to addressing the need for a more uniform and appropriate law.

It is suggested by a consultant active in the area, P Buys, that a national planning agency should be constituted to address this matter, as the current endeavours that produced the Spatial Planning and Land Use Management Bill (2011) appear to be ill-aligned and do not take the current practicalities of land use in provinces and municipalities into account.

5.0. Overview of key issues that have implications for Provincial Planning Legislation in the Province

a) National Spatial Planning and Land Use Management Bill of 2011

The Constitution provides for land use planning powers at the three spheres of government. National law may regulate both provincial and municipal land use planning, and the draft Spatial Planning and Land Use Management Bill (2011) aims to do this and provide the framework for consistency in the content of provincial law. In terms of the draft legislation the scope of provincial planning is defined to allow the preparation of provincial spatial development frameworks, decision-making in respect of land use matters falling within provincial executive competence, and the making of laws necessary to implement provincial planning.

b) The realities of the development challenges in municipalities

The proposed provincial planning law must address the challenges of developmental government and transformation. The current legal framework has elements that work fairly effectively in the established urban areas, but which cannot cope with the demands for formalising and addressing the needs of the wider provincial community.

The current constraints in areas of governance, service delivery, and financial management need to be considered in respect implementing a new system of land use management in spheres of government, and particularly the transition arrangements at municipal level.

The special circumstances in traditional areas into the Province require attention relating to the integration of customary practices and laws and a clear role for traditional leaders, given the national trend toward formalisation of development and land tenure.

c) Nature of the laws

The preference is for a single national framework law and province-specific, but aligned, provincial law to apply. The current legal environment is fraught with numerous and often, counter-productive laws that unnecessarily complicate forward planning, development and administration.

d) Nature of the institutional arrangements

Effective land use administration requires cooperation between the three spheres of government, usually where comments or related approvals or registrations are required to finalise applications or property transfers.

e) Timeframes

The processes that have been in place from the pre-1994 era, other than the DFA, have had largely open-ended timeframes associated with their application. It would be beneficial if limits could be set in key provisions of the law to expedite decision-making.

f) Information and draft regulations

The availability of planning data and its use in forward planning for monitoring progress towards developmental goals is necessary in view of the current absence of base line information.

With regard to draft regulations, it is clear that the application of uniform documentation across the Province would facilitate an easier land use planning environment for public and private developments.

6.0. Conclusions and Recommendations

6.1. Conclusions

a) Planning roles

The three spheres of government have been allocated land use planning powers by the Constitution, and provincial legislation with regard to planning plays a critical role in the division of authority between provincial government and local government. This includes the municipal power over municipal planning as listed in Schedule 4B of the Constitution (1996), and the limited scope of provincial authority over this function.

The pressure for changes to the existing system has been heightened with the Constitutional Court ruling (2010) about the use of Chapters V and VI of the DFA (1995), and the explicit reference to the municipal responsibility for the functional area of “municipal planning.”

The Provincial government in Limpopo has historically played a significant role in municipal planning by virtue of the existing legislation. The Constitutional considerations, the demarcation of wall-to-wall municipalities, and the mismatch between old laws and new planning directions and the concept of developmental local government necessitate a rethink about the future role of

the Province in planning matters. At this stage there is no indication from the Department of Local Government and Housing about steps to address the DFA ruling (2010) or to investigate the implications for its future role in land use planning.

The general view expressed by officials interviewed is that land use approval at municipal level is preferable, owing to local knowledge and municipal management requirements. However, at present this preference only applies at capacitated municipalities, while other municipalities will need some form of provincial intervention.

There is support for appeals against municipal decisions, possibly through an independent tribunal. In principle, the appealed decision must be considered by a separate entity.

Where there are overlapping procedures, such as in the case of environmental approvals, the matters covered in such approvals must be tailored to avoid duplication, unnecessary expense, and mismatches.

Given the challenges faced by geographically extensive municipalities, some with formal urban areas and others without any, it would seem that there is a vital role for province to support and guide land use planning, address traditional areas, impose standards, monitor and provide planning support.

The above cannot be achieved with the current lack of capacity at province, nor without interventions to address the capacity and skills shortcomings of most of the 25 local municipalities in the province.

b) Relationships between spheres of government

Effective land administration requires cooperation between the three spheres of government and needs to be improved. In particular, the involvement of traditional councils in land use decisions needs to be addressed, as development in these rural areas can be stifled by land ownership constraints, uncertainty about rights and infrastructural limitations.

Clarification of roles and responsibilities in the current legal framework would assist in making a more effective system, but in the event of a new law this aspect would be essential to workable

relationships. In Limpopo, the indications are that critical permissions from other departments delay the outcomes of land use applications.

c) Integration of development strategies

Earlier reference has been made to the Provincial Spatial Development Framework (2007) in Limpopo, and its relationship to the provincial growth and development policy. It is however not clear whether the guidance contained in the provincial SDF is achieving the anticipated changes in development patterns on the ground. There does not appear to be base-line information that is monitored to assess changes over time.

An understanding of the practicalities of achieving appropriate spatial development patterns (for instance, in traditional areas) must underpin the strategies proposed in municipal spatial development frameworks. It appears that decisions on land use are often influenced by the spatial plan, and less by aspects such as availability of services and land ownership.

The alignment of policies and strategies and their dependencies (e.g. engineering services) needs greater attention if integrated initiatives are to work.

It is important that information on policies and statutory matters are available to the public and other departments. This can be improved, particularly by use of electronic systems.

d) Statutory Boards

As a general rule, members of statutory boards should be provided with adequate training about the role of land use planning and planning regulation, comprise of members who have a degree of expertise in the field, or be advised by suitable experts.

The administrative capacity of the Limpopo DFA Tribunal, which has a single Designated Officer, is of concern. Adequate administrative support is required if the DFA Tribunal and other statutory boards are to function effectively.

e) Institutional capacity

The leadership of the responsible departments, particularly in political appointments, needs to be clear on the purpose and mission of the land use function.

It is clear that the complexity of the legal environment requires experienced staff to maintain the efficacy of the system.

The introduction of new laws needs to be cognizant of available capacity at the responsible authorities.

f) Diversity of legislation

The current diversity of laws regulating and impacting on land use, and the patchwork nature of its applicability is not useful to development facilitation.

The popularity of the DFA (1995) stems from its wide applicability and greater certainty in the determination of appropriate land use rights. A single, clear set of planning laws linked to spheres of government and their Constitutional competencies appears vital to effective planning.

The development of Land Use Management Schemes for each municipality will assist in the administration of the very extensive municipal jurisdictions and provide insight into appropriate provincial and national laws. While the administration of the Ordinance (1986) was assigned to Limpopo under Proclamation R161 of 1994, its applicability to the whole Province must be checked for legal correctness, as is being done in Mpumalanga.

g) Performance

The Limpopo provincial record of planning applications is reflected in the paragraph 2. It indicates the variety and number of applications received.

The other relevant consideration about performance is whether the planning guidance and decisions on land use matters are contributing towards the achievement of national goals and sustainable development. There is no mechanism for this type of assessment at present, given the lack of electronic data.

It is clear that, insofar as private investment in the province is concerned, it is imperative that a reliable and consistent system of land use development is put into place. The current system, other than the DFA (1995), is fragmented and not adequate for the security that investors require.

In the case of municipalities, municipal rates and services income is affected by land ownership, land use rights, and other key factors. A good land use management system is critical to their

financial management and the achievement of their developmental and governmental responsibilities.

6.2. Recommendations

It is important that a national framework for land use planning and management be finalised to create certainty about alignment and content of provincial legislation. The national sphere would also seem to have better opportunity to resolve conflicts arising from non-aligned laws than the lower spheres of government.

This process could be best informed if initial steps towards new provincial law are undertaken by Limpopo to place it in a more informed position vis-à-vis engagement between it and the national department of Rural Development and Land Reform, responsible for the Spatial Planning and Land Use Management Bill (2011).

The scope of land use planning dictates that it interacts with all three spheres of government, and involves numerous other aspects of development, including engineering services, environment, housing and heritage, as well as the laws that regulate those sectoral interests. The effective functioning of the land use planning system will of necessity remain complex even if the planning laws are aligned, but this can be improved by better alignment between the administrative structures that play significant roles in land use planning and the institutional arrangements associated with them.

7.0. References

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8.0. Annexures

Annexure 1: Overview of township establishment procedure

PROCEDURE	TIMING IN MONTHS																	
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
Pre Application Phase	█																	
Township Establishment																		
Preparation and Lodging	█	█																
Advertisement			█	█														
Comments from Council and other Authorities				█	█	█												
Reply to Comments and Planners Report to Council							█											
Decision of Tribunal								█	█	█								
Draft Conditions of Establishment											█	█						
Acceptance of Draft Conditions													█					
SG Erf Numbers, Plan amendment & Approval														█				
Final Conditions of Establishment														█				
Conditions of Establishment															█	█		
Compliance with Pre-Proclamation Conditions:																	█	█
• Cancellation of Title Conditions (if applicable)																	█	█
• Approval of the General Plan																	█	█
• Approval of the Amendment Scheme																	█	█
• Other Miscellaneous Conditions																	█	█
• Opening of Township Register																	█	█
Proclamation																		█
Site Development Plan and Building Plans																		█

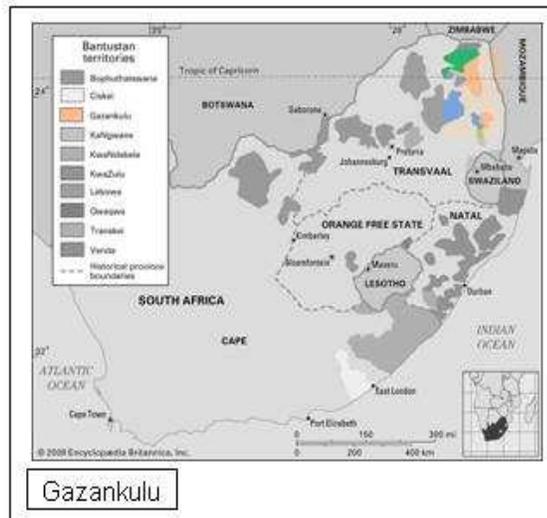
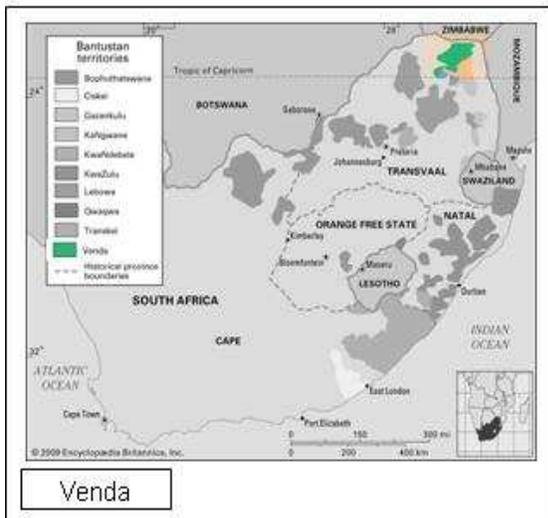
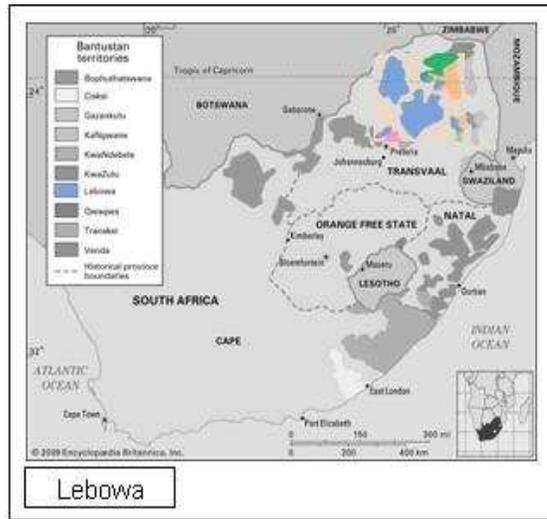


Figure 2: Homelands