

Reforming the regulatory environment for urban planning: taking stock and moving forward

*A discussion document for the City Budget Forum's
Planning Alignment Task Team*

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1 Executive Summary

This report examines the regulatory framework governing city planning and identifies areas for reform in the design and implementation of this legislation. Although the focus is on legislative reform, the report is very firmly grounded in the view that legislative reform that happens in isolation from the institutional and fiscal context is doomed to fail. Should new laws be needed, they must be designed to work within the prevailing institutional and fiscal context, and any analysis of current and historic challenges must acknowledge the constant interplay between law, finance and institutions.

South African cities are faced with the serious challenge of improving their economic, social and spatial performance. If they are unable to improve spatially, it will be very difficult for the economy as a whole to improve: job-creation prospects will weaken, and poverty and inequality will increase. Planning by metros, carried out in terms of the relevant legislation, is one important way in which metros can improve their performance. When planning is effective, when it engages effectively with the land-development market, when it includes citizens in decision-making, and when it guides the investment of public funds towards desired outcomes, it contributes directly to the vision set out in the National Development Plan. On the other hand, when planning is driven primarily by statutory-compliance requirements, and when it is purely aimed at controlling and restricting private-sector and citizen behaviour, it undermines the transformation process and imposes high costs on both the public and private sectors.

After the fall of apartheid, in the mid- to late 1990s, there was widespread confidence in the power of “plans”, particularly integrated development plans (IDPs), to drive spatial transformation. This confidence proved to be misplaced. Simply having a plan, no matter how detailed, was no guarantee that planned outcomes would be achieved. From 2000 to 2010 cities and national government (particularly the Treasury) recognised that IDP-based planning was not yielding optimal outcomes. It was not sufficiently linked to the budgets and fiscal framework within which cities operate. IDP requirements were increasingly being swamped by additional planning requirements imposed by national sector departments. The misplaced confidence in the capability of the plan *per se* to effect change gravely underestimated the scale and importance of private-sector investment in land development—investment that in many cities outweighed that of all three spheres of the public sector (national, provincial, and local) combined.

Metros began to extricate themselves from the requirements of the IDP when they wanted to do “real” strategic planning or long-term vision-exercises. The planning instruments that metros began to develop and use existed outside of (but ran parallel to) the IDP process. Examples of this trend included city-development strategies, growth-management strategies and vision statements like the Tshwane Vision 2055, and Joburg 2030.

While metros pioneered their own planning instruments, and the Treasury explored non-planning interventions to achieve spatial objectives, the formal legislative environment for urban planning stagnated, bogged down by uncertainty regarding the respective powers of the three spheres of government to regulate the making and implementation of municipal spatial plans. As planning-law reform stalled, cities and the Treasury sought different ways to achieve greater certainty and efficiency in medium- to long- term planning.

The National Treasury emphasised that *where* money is spent is as important as *how* it is spent, and so explored ways to improve the spatial outcomes of municipal planning. Increasingly, the Treasury used grant conditions as a tool for achieving spatially targeted outcomes.

Following an important Constitutional Court case in 2010, the legal uncertainty that had plagued planning-law reform for more than a decade cleared. This led to the enactment of the Spatial Planning and Land Use Management Act (SPLUMA) of 2013. Metros now face the complex challenge of implementing new legislation that introduces some improvements but also leaves a number of difficulties unresolved. In addition, they are engaged in the compilation of Built Environment Performance Plans (BEPPs), required in terms of the Division of Revenue Act. These plans are increasingly being used to achieve—with success, for the most part—the outcomes that the IDP-based system (now supplemented by SPLUMA) was designed to achieve. These outcomes include a tighter linkage between planned activities and actual expenditure of capital budgets, as well as strengthened integration between different sectoral infrastructure budgets. The overall effect of the BEPP has been a more sharply focused approach to planning by the metropolitan municipalities, with a strengthened commitment to achieving targeted outcomes within planned timeframes.

The general weakening of the spatial-planning system led to an decoupling of private-sector-investment decision-making from municipal planning. Developers are increasingly able to make their locational investment decisions independently of what the applicable spatial plans prescribe. Notwithstanding the improvements to planning practice introduced by the BEPP, the challenge of getting private-sector investment behind the spatial targets of each city's plans remains formidable.

In order to remedy the current problems and points of disconnect in the municipal-planning sector, changes are needed. Some of these changes are legislative, and others are institutional, but all relate to the fiscal framework within which metros operate.

South African cities face unprecedented financing and infrastructural challenges. As they meet these challenges, cities enjoy the Constitutional Court's confirmation of their municipal-planning powers. Rationalising and aligning the different components of this regulatory environment is a necessary, if not in and of itself sufficient, condition for urban transformation.

There has to be broad, intergovernmental consensus regarding the changes that are needed to transform cities' planning practices. This consensus should build on the principles of the National Development Plan and the Integrated Urban Development Framework. Once this consensus has been achieved, a programme of action must be designed and implemented to bring about the necessary changes in legislation, policy, and institutional arrangements. These changes will need to be implemented by all three spheres of government.

2 List of acronyms used in this report

BEPP	Built Environment Performance Plan
CIMS	Capital Investment Management System
DCOG	Department of Cooperative Governance
DFA	Development Facilitation Act, no. 67 of 1995
DORA	Division of Revenue Act
DPME	Department for Planning, Monitoring and Evaluation
DRDLR	Department for Rural Development and Land Reform
FFC	Financial and Fiscal Commission
IDP	Integrated Development Plan
IUDF	Integrated Urban Development Framework
MFMA	Municipal Finance Management Act, no. 56 of 2003
MSDF	Municipal Spatial Development Framework
MTSF	Medium-Term Strategic Framework
NDP	National Development Plan
NBS	Network for Business Sustainability South Africa
SDBIP	Service Delivery and Budget Implementation Plan
SDF	Spatial Development Framework
SPLUMA	Spatial Planning and Land Use Management Act, no. 16 of 2013
UIPC	Urban Investment Partnership Conference
UNS	Urban Network Strategy
USDG	Urban Settlements Development Grant

3 Introduction and background

This report was commissioned by the Cities Support Programme to stimulate discussion within the Planning Alignment Task Team around the desired direction for legislative reform of the country's urban-planning system. The report is focused primarily on the conditions in the metropolitan municipalities, but much of it will also apply to some of the larger, secondary cities as well. Although the focus is on legislative reform, the report is very firmly grounded in the view that legislative reform that happens in isolation from the institutional and fiscal context is doomed to fail. Should new laws be needed, they must be designed to work within the prevailing institutional and fiscal context, and any analysis of current and historic challenges must acknowledge the constant interplay between these three spheres: law, finance and institutions.

The National Development Plan (NDP)'s chapter on human settlements (Chapter 8) identifies the need for a fundamental review of the country's spatial-planning systems and frameworks. The NDP proposes the establishment of an interdepartmental spatial-coordination committee within the Presidency, with a mandate to drive spatial planning across the entire country, to meet the responsibilities for spatial planning within national government, to remove duplication, and to recommend which department or agency should be responsible for overseeing spatial planning. This committee would also be charged with operating a mediation process to resolve serious spatial conflicts between spheres and departments, creating a robust set of spatial indicators, and initiating a legislative-reform process. In turn, this legislative-reform process would, among other things:

- produce new spatial-planning and land-use-management legislation (a requirement partly fulfilled by the enactment of the Spatial Planning and Land Use Management Act (SPLUMA), Act 16 of 2013);
- rationalise the planning system to require all municipal and provincial spatial plans to be translated into spatial contracts; and
- develop a more effective system of governance for city-regions.¹

The proposals set out in this report fall squarely within the ambit of the spatial-planning reforms envisaged in the NDP. The NDP commits government to not only spatial transformation in cities (Chapter 8) but also the building of a more capable state (Chapter 13). Neither of these outcomes is possible or feasible without sustained reform and rationalisation of the legal, institutional and fiscal frameworks governing city planning.

Cabinet approved the country's Integrated Urban Development Framework (IUDF) in April 2016.² This marks an important milestone in the achievement of the National Development Plan's objectives, specifically those in the NDP's Chapter 8.

¹ At page 252.

² Available at <http://www.cogta.gov.za/?programmes=the-integrated-urban-development-framework-iudf>.

Planning does not have value as an activity in and of itself. Rather, metros plan in order to ensure that their resource-investment and decision-making, especially in relation to land development, achieve the best possible outcomes. The main drivers of investment in most cities are private-sector developers. Through their investment, city economies grow, municipal revenues rise and infrastructure is financed. Many of the shortcomings with the current regulatory environment that are identified in this report are the result of an incomplete or weak understanding of the impact of planning on investment decisions in both the public and private sector.

4 South African cities: the case for change

Four strategic goals are at the heart of the IUDF,³ the first of which is spatial integration. The other three are inclusion and access, growth, and governance. These four strategic goals inform a set of nine policy levers, which in turn shape the basis of the IUDF’s recommendations for practical implementation.

Research commissioned by the Financial and Fiscal Commission (FFC) in 2011 makes a compelling financial and fiscal case for spatial integration and compaction—for changing the historic and ongoing trend towards low-density urban sprawl. The FFC concluded that, over a ten-year period, a hypothetical South African city (drawing on the spatial and economic structures of Cape Town, Johannesburg, and Ethekewini) that continues to grow in line with current land-use patterns will cost the city economy—in terms of costs to the state, households and the environment—R57 billion more than a compact city would (in 2011 terms, or around R70 billion in 2016 terms)⁴. Improving the spatial form of the city would effectively release an additional R7 billion per annum for the city’s economy. By way of example, this annual cost-saving would equate to roughly the total annual capital budget for the City of Johannesburg.⁵ Figure 1 below illustrates the FFC’s estimate of the cost-savings that could be achieved through a more compact urban form, drawing on growth projections for six metros.

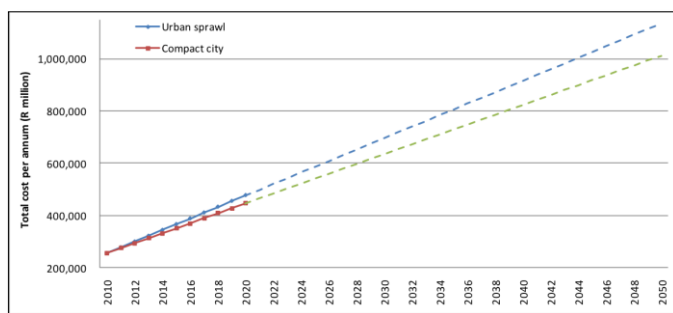


Figure 1: Projected total capital and recurrent costs for six South African metros under two growth scenarios (R million), 2010–2050 (FFC report, 2011)

³ IUDF (2016) at page 9.

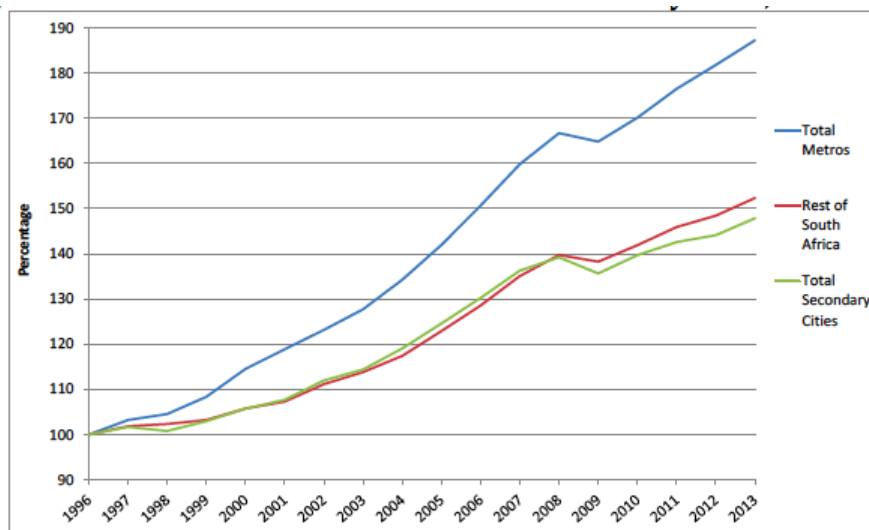
⁴ Financial and Fiscal Commission (2011). Economic and Fiscal Costs of Inefficient Land-use patterns. Page 3 of the Executive Summary available at www.ffc.co.za.

⁵ See SA Cities Network *State of South African Cities* report, 2016, at page 255.

The challenges that have to be managed and overcome by the country's planning system are substantial. The social, spatial, biophysical and financial situation in each city is poor. Some cities perform better than others but, overwhelmingly, all are marked with high levels of inequality, profound inefficiencies, polluted and damaging environmental conditions, and poor financial and economic performance. Adding to the current difficulties being faced by cities is the ongoing rate of urban population growth: by 2030, in 14 years, there will be an additional 7.8 million people living in South African cities; by 2050, the new urban population will amount to around 13.8 million—equivalent to a new Gauteng, in current terms.⁶

The long-term costs projected by the FFC and the SA Cities Network will continue to grow exponentially if current spatial trends are not addressed. The planning challenge is therefore not driven only by the need to integrate divided communities and promote more sustainable development trends; it is also about releasing some of the financial resources that are currently being wasted through spatial inefficiency, and redirecting these resources towards economic growth and job creation.

The country faces the very real threat of economic stagnation and decline, which would worsen already-strained tax revenues and increase unemployment levels. Cities have a key role to play in reversing current downward economic trends. Figure 2 below illustrates the importance of cities as generators of economic growth in relation to the rest of the country, showing the disproportionately high contribution that cities make to the growth of economic output, as measured by Gross Value Added.



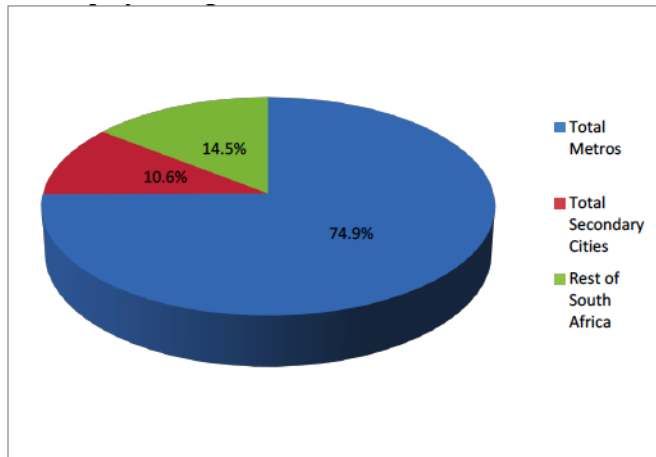
Source: IHS Global Insight database

Figure 2: Growth in Economic Output, 1996 – 2013

Between 1996 and 2012, the metros contributed 75% of all net job creation in South Africa (see Figure 3 below). The economic-growth case for making cities

⁶ National Planning Commission (2011) *National Development Plan: vision for 2030*. Page 238.

more economically efficient and thus able to drive job creation is thus compelling.



Source: IHS Global Insight database

Figure 3: Contribution to employment growth, 1996 - 2012

Two of the nine policy levers identified by the Integrated Urban Development Framework (IUDF) relate directly to the scope of this report: *integrated urban planning and management* (policy lever 1) and *efficient land governance and management* (policy lever 5). In relation to the first of these policy levers, the IUDF argues that there is

weak planning and coordination within government and with the private sector. Despite the intense level of planning by cities, government's long-range planning is neither legislated nor coherently coordinated, and so lacks both vertical and horizontal alignment. Distrust and conflict among government spheres have also resulted in uncertainty and costs, and undermined efforts to collaborate. Investments by other parts of government tend to ignore the municipality's SDF, resulting in poor integration between sectors. In some cases, even municipal investments are not guided and informed by the SDF. Private sector investments frequently fail to align to public sector plans, possibly because of a perceived lack of robust and consistent spatial directives.

In response to these concerns about weak planning and coordination, the IUDF concedes that,

[a]lthough SPLUMA provides a framework for spatial planning and land-use management aimed at spatial transformation, gaps remain for ensuring that sectoral plans are aligned both horizontally (within spheres) and to municipal long-term development strategies and SDFs. More fundamental changes are needed to ensure that sectoral programmes take into account municipal spatial planning, which also means that greater emphasis should be placed on the quality of municipal spatial plans. Linkages are urgently needed between the

local plans (e.g. SDF, IDP), the capital investment framework and the land-use management framework.

The IUDF goes on to highlight that there is “[i]nsufficient use of intergovernmental relations (IGR) structures” in the planning and management of urban development:

IGR structures and intergovernmental planning are detached from each other, missing the opportunity to integrate and align development initiatives. IGR structures are not being used optimally for their intended purpose, including that of enabling integrated development planning. Provinces seem to have two centres of coordination: the Offices of the Premier are responsible for vertical planning across departments, while the provincial departments responsible for local government oversee intergovernmental planning between the province and municipalities in the province. There is insufficient collaboration at this horizontal planning level.

Compounding these two main difficulties is the weakness—or even absence—of long-term planning. As the IUDF explains:

There is a high degree of uneven capacity and approaches with regard to integrated long-term or forward planning. The five-year horizon of IDPs is too limited to address elements such as infrastructure expansion, disaster risk measures and integrated transport and human settlements necessary to overcome spatial inequalities. These elements require much longer time horizons. For example, most infrastructure investments will produce assets that have a 50- to 80-year lifespan. Given the costs and implications, making the wrong decisions can mean effective technological lock-in that precludes more innovative choices.

In general, “weak capabilities for spatial decision-making and administration” and “poor urban management” contribute significantly to a less effective urban-planning system and negatively impact both the private sector and local communities. Metros generally find themselves technically and strategically impotent in the face of private-sector real-estate investors and speculators, while firms and households incur significant risk to their fixed investments as a result of poor management of the urban environment.

These various weaknesses in the current city-planning system will need to be addressed if cities are to fulfill their role of driving economic-growth and job-creation rates.

5 Confronting the urban crisis: an urgent challenge

Climate change, rural-urban migration and rapid population growth, in a context of declining economic growth, job-creation and productivity, are key challenges

faced by cities around the world today. In South Africa’s case, these are aggravated by the legacy of apartheid, which imposes starkly segregated, unsustainable and sprawling, inefficient spatial patterns onto cities.

Planning policies and principles, at least in theory, adhere to the goal of spatial transformation. Spatial transformation also guides the grant frameworks for grants to city governments, such as the Urban Settlements Development Grant, the Integrated Cities Development Grant, and the Neighbourhood Development Grant. Cities, however, have proved stubbornly resistant to change, with only limited and partial transformation occurring in some parts of some cities.

Entrenched property interests, the legacy of urban-infrastructure investment patterns that had reinforced apartheid planning, and the determination of city governments to sustain and protect property-based revenue streams all drive the perpetuation of inherited spatial patterns. Escalating the impact and effectiveness of legal and policy interventions to change these patterns is a priority for urban policy in South Africa. Unless there is fundamental change in the way cities are managed and planned, the spatial trajectories initiated under apartheid will continue to dominate the cities. Simply getting implementers and decision-makers to work harder on policy alignment or to cooperate better between sectors and institutions is not enough: these are necessary conditions for change, but they are not sufficient.

To improve the quality of life of ordinary South Africans living and working in cities, the continued and increased provision of finance is needed, both for capital investment and operating budgets. Figure 4 outlines the capital investment required by the metros over the coming decade, indicating the scale of public-sector investment.⁷ These figures do not include the investment in infrastructure that the private sector will make. Effective planning will have to determine and influence the outcomes, in spatial and financial terms, of this investment by both the public and private sectors.

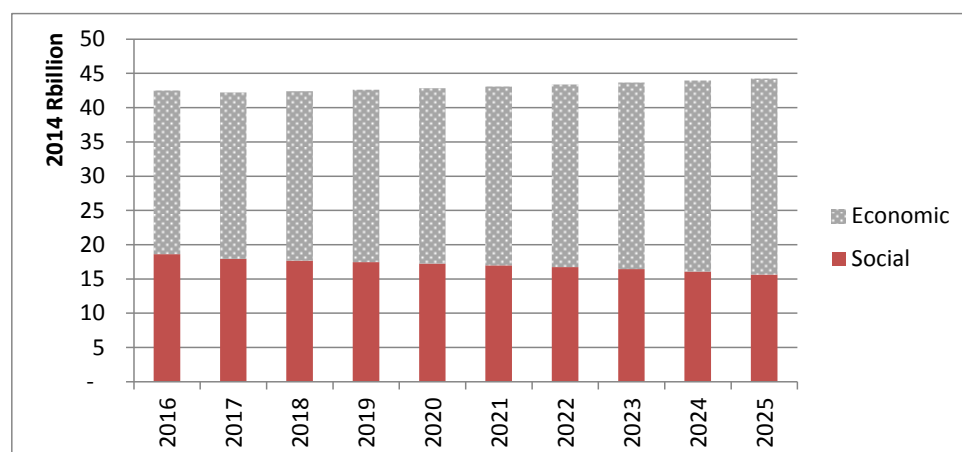


Figure 4: Projected capital investment by metros, 2016 - 2025

⁷ PDG (2015). *Modeling the infrastructure investment needs in South African metros: 2016 to 2025*. Report prepared for National Treasury as an input into the Urban Investment Partnership Conference (UIPC).

The IUDF cites two key figures that underscore the scale of the infrastructure challenge facing South African cities:

- Notwithstanding current infrastructure grants (and cities’ and developers’ own contributions), the capital-investment gap in relation to city infrastructure over the next five years amounts to an additional amount of R4 billion per infrastructure sector per year;⁸
- To maintain and operate both current and anticipated new infrastructure, municipal operating budgets will have to rise by 63% over the next decade.⁹

To address the challenges set out by the IUDF, city-planning instruments and systems must promote and generate economic growth, and tax revenues. It is also imperative to avoid the inevitably high opportunity costs of continuing to implement instruments and systems that are spatially and fiscally inefficient and that fail to yield desired outcomes.

Figure 5 below sets out a proposed “theory of change”, relating the city-planning frameworks (the enabling environment) to the outcomes sought from the urban-development value-chain. The red blocks represent, on the one hand, the regulatory inputs into the urban-development process and, on the other hand, the desired outcomes of these inputs. Each of the aspects described by the central black blocks has to work if the desired outcomes are to be attained; however, in order for the different parts of the system to work together effectively, the enabling environment has to establish the right regulatory prescriptions and levers. Precisely that process is the focus of this report, which identifies the ways in which the regulatory environment can be improved in order to bring about the envisaged outcomes of investment, efficiency and inclusion.

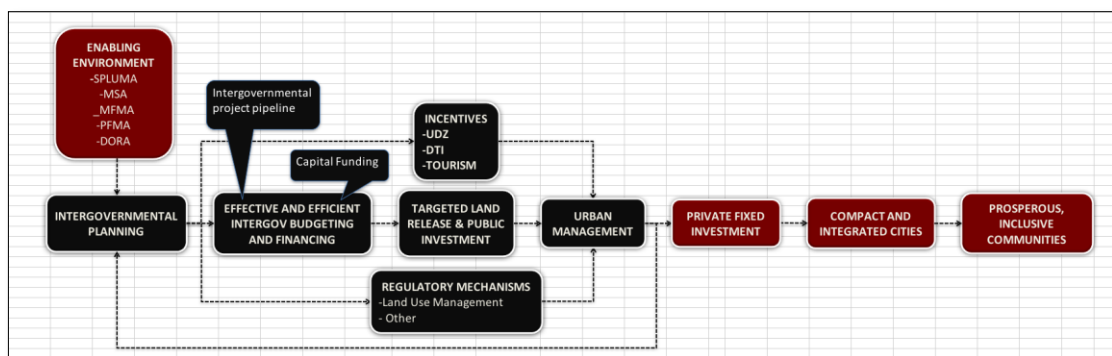


Figure 5: “Theory of change” diagram (National Treasury, NDPG Unit, 2016)

The complexity of the urban-development process—and the range of variables depicted in the black blocks—demands that each step in the process be carefully

⁸ FFC (Financial and Fiscal Commission). 2013. 2014/2015 Submission for the Division of Revenue. Midrand: FFC, p. 136.

⁹ Palmer, I, Graham, N, Swilling, M, Robinson, B, Eales, K, Fisher-Jeffes, L, Käsner, SA and Skeen, J. 2013. South Africa’s Urban Infrastructure Challenge. A Contribution to the Integrated Urban Development Framework.

geared towards achieving the desired outcomes. An “intervention logic” built on the need to achieve these outcomes has to run through the entire system. Sharpening the capital funding and budgeting instruments needed to realise this goal is important, and is an ongoing process. The enabling environment, made up primarily of laws and policies, depicted in Figure 5, is a matching intervention at the planning and regulatory level, that is now urgently needed too. The diagram also confirms that outcomes cannot be achieved through strengthening individual aspects, in isolation from the other parts of the urban-development value-chain. Both parts of the value-chain have to be addressed with equal vigour.

6 Reflecting on past confidence in urban plans

The transition to democracy was characterised by a high level of confidence in the power of urban planning to undo the spatial—and other—legacies of apartheid. The Reconstruction and Development Programme established in 1994 acknowledged a challenge that remains pertinent today: that of old-order land-use management and zoning regulations, which effectively perpetuate undesirable spatial patterns. The excerpt below illustrates at once the confidence in the power of a plan to change the effects of land-use regulations and a disregard for what would later emerge as a driving force in planning-law reform: namely, the executive and legislative powers of municipal government.

Planning guidelines must also subordinate local planning to metropolitan/district, provincial and national development planning (for example, by reducing the status of zoning and town-planning schemes to the status of local plans which are automatically overridden by higher levels of planning).¹⁰

The idea of a quintessentially South African *integrated development plan* (IDP) for municipalities was first introduced as early as the 1996 Local Government Second Amendment Act, no. 97 of 1996. The IDP was widely expected to enable local democratic forces to drive spatial change. The 1996 legislation made it mandatory for a municipality to have an IDP, defined as “a plan aimed at the integrated development and management of the area of jurisdiction of a municipality”. The law acknowledged that this was a transitional measure that would prevail until comprehensive local government legislation was enacted. It was necessarily a fairly rudimentary piece of law, but it did require the municipalities to develop plans that addressed land-use management, transport and infrastructure planning, and local economic development and that were linked to municipal budgets. A parallel transitional measure that had emerged in 1995 was the requirement in the Development Facilitation Act, no. 67 of 1995, that every municipality develop “land development objectives”,¹¹ known as LDOs, which were more overtly spatial in their orientation than the 1996 IDPs. With the IDPs taking on the institutional planning and the LDOs focused more on

¹⁰ African National Congress (1994) *Reconstruction and Development Programme*, paragraph 6.4.4.

¹¹ Chapter 3 of that Act.

spatial planning, it was hoped that the apartheid spatial legacy could be undone between these two instruments.

The Local Government: Municipal Systems Act, no. 32 of 2000, devotes an entire chapter to Integrated Development Planning.¹² The Local Government: Municipal Planning and Performance Management Regulations of 2001 further regulated the content of IDPs and the process for developing and approving plans. Although LDOs remained in force in strictly legal terms, by virtue of the Development Facilitation Act, they largely fell away in practical terms, and were effectively replaced by the mandatory spatial-development framework that was to form part of every IDP.

In the first decade of the twenty-first century, integrated development planning was rolled out in municipalities across the country. A substantial programme of support for local government was rolled out, with comprehensive manuals and training programmes being developed to assist with integrated development planning.

National departments gradually added to the requirements of the IDP, stipulating in sectoral legislation that focused sectoral plans must be compiled and implemented as part of the IDP process. So, for example, the National Land Transport Act, no. 22 of 2000, as well as its replacement, the National Land Transport Act, no. 5 of 2009, both required integrated transport plans to be developed as part of the IDP plan-making process. Similarly, housing chapters were required to be included in IDPs from 2009 onwards, in accordance with the Housing Code that emerged from the Housing Act, no. 107 of 1997.

The IDP was increasingly acknowledged internationally as good practice in city planning; in the 2004/2005 State of World Cities Report, South Africa's promotion of IDPs was lauded as "the clearest manifestation of the new culture of urban planning", a sign that planning in this country was becoming more strategic, participatory and integrated."¹³

7 Recognising the limits of post-apartheid planning frameworks

As cities and other municipalities met the statutory requirement to approve and implement IDPs, concerns emerged that the plans were not delivering the expected outcomes. To the architects of the post-apartheid planning system, it had seemed self-evident that integrated development planning—together with a generous capital budget for low-income-housing provision—would achieve spatial transformation and the creation of more efficient and equitable cities. Evidence accumulating through the 2000s told a different story, though. The capital-subsidy formula for low-income housing had driven housing for the poor to the urban periphery, and engineering services and transport infrastructure

¹² Chapter 5.

¹³ UN-Habitat (2004) *The State of the World's Cities: globalization and urban culture*, at page 166.

were being provided to those areas inefficiently, if at all—and not even very well to other parts of cities either. Not only were cities not overcoming the legacy of apartheid in spatial terms: they were also becoming less efficient in economic terms, less able to generate the jobs and the wealth needed to sustain the economy.

The realisation that the IDP system was not living up to expectations became evident both in national government and in the metros. Throughout this period, the National Treasury expressed concerns that the system of infrastructure grants to local government was not yielding the desired spatial, social and financial outcomes. The National Treasury, together with the Department of Cooperative Governance and Traditional Affairs (DCOG), also identified the need to finance infrastructure in the metros differently to smaller towns. In 2008, the Urban Settlements Development Grant (USDG) was approved as a substantial and integrated grant to finance infrastructure in the metros, particularly infrastructure needed to meet the needs of poor households and to address apartheid spatial segregation and dysfunction.

Having acknowledged the shortcomings of the IDP, the primary city-planning instrument at the time, a supplementary requirement was introduced in the form of the Built Environment Performance Plan (BEPP). The BEPP was required as a condition for the disbursement of the USDG. The BEPP was not intended to supplant the IDP, or any component of the IDP. However, as a planning requirement that circumscribed metros' access to funding, the BEPP began to assume a stand-alone status of its own. Since 2010, the legal framework surrounding BEPPs has expanded and strengthened, evolving it from a policy requirement in the grant framework to a mandatory requirement for all metros, in terms of successive Division of Revenue Acts.

The BEPP was introduced to address directly the shortcomings in the regulatory framework for city planning, to achieve better planning outcomes for metros as well as a better value-for-money return on national funds transferred to metros through the grant system. They promoted transit-oriented development as a central element of the planning system, and sought the ongoing rationalisation of the grant framework as a way to drive patterns of infrastructure investment that reflected the spatial model promoted by the Urban Network Strategy, a strategy introduced by the National Treasury (and discussed further below).

When metros wanted to do “real” strategic planning or long-term vision-exercises they realized that the IDP was an imperfect instrument for these purposes. They developed, adopted and borrowed planning processes outside of (but parallel to) their IDP processes. Examples of these alternate planning instruments include city-development strategies, growth-management strategies and vision statements like the Tshwane Vision 2055 and Joburg 2030. It was to these alternate instruments that city leaders turned when they wanted to demonstrate their and their administrations' desired outcomes for their cities.

In short, then, the period after 2010 saw signs from both National Government and the metros that all was not well with the IDP-based system of urban

planning. Alternative instruments were explored, ones considered more likely to deliver planning outcomes and offer value for infrastructure money. The priorities underpinning the design of city-planning instruments had shifted: simply pursuing compliance with statutory requirements was out; foregrounding and prioritising strategic choices and trade-offs was in. Strategic choices and trade-offs were increasingly acknowledged as crucial for the future management and planning of cities, while more formal, statutorily mandated planning instruments were exposed as incapable of delivering the required decision-making framework.

8 Planning law reform: legal distractions

The Development Facilitation Act, no. 67 of 1995 (DFA), now repealed, was among the first batch of democratically enacted laws. The DFA made provisions for interim procedures to fast-track land development—procedures that were eventually deemed unconstitutional. It also provided for a national Development and Planning Commission, charged with designing a new post-apartheid legal and policy framework for urban and rural planning. The DFA framework was rapidly eclipsed in the late 1990s and early 2000s, however, by the various pieces of local-government legislation that emerged—including, of course, the integrated development plan (IDP).

Reforming the legislative environment for urban planning has been dogged, however, by ongoing legal uncertainty regarding the extent to which each sphere of government is empowered to make legislation, on the one hand, and executive decisions in relation to plan approval and land-use changes, on the other. This uncertainty has made moving towards a clear and unambiguous legal framework for city planning and decision-making more difficult. As provinces bumped heads with the national Department of Rural Development and Land Reform (then the Department of Land Affairs), and cities increasingly voiced both their frustration with the impasse and their interest in exploring options for regulating city planning independently of national and/or provincial legislation, there was little progress in law reform. Cities continued to compile and implement IDPs.¹⁴

By 2010, there were two significant changes.

- The first was the introduction of the Built Environment Performance Plan (BEPP), outlined above. The BEPP led to a fundamentally different way of planning for infrastructure investment and land development by and in metros.
- The second was the landmark case of *City of Johannesburg v Gauteng Development Tribunal and others*,¹⁵ in which the Constitutional Court resolved some of the uncertainty regarding the legislative competence of each sphere to regulate spatial planning and land-use management. The court concluded that spatial planning and the regulation of land use and land development fall squarely within the competence of *municipal*

¹⁴ As noted in the previous section though some cities also developed City Development Strategies and similar instruments, outside of the IDP process and its regulatory requirements.

¹⁵ [2010] ZACC 11; 2010 (6) SA 182 (CC); 2010 (9) BCLR 859 (CC).

planning, a competence that falls under schedule 4B of the Constitution. The effect of this ruling was twofold. It meant that both national and provincial governments could proceed with their respective law-making processes with more confidence and more certainty. And it also confirmed the executive decision-making powers of cities regarding municipal planning, allowing them to approve plans and land-development applications.

The approach adopted by the Constitutional Court in 2010 has been reinforced and affirmed by the court in a number of subsequent judgments. In the most recent case, *Tronox KZN Sands (Pty) Ltd v Kwazulu-Natal Planning and Development Appeal Tribunal and Others*,¹⁶ the judge emphasised “the inviolability of executive municipal power and the necessity of interpreting the Constitution in a manner which respects that power.”¹⁷ He also explained that local government’s power to manage municipal planning is “autonomous and under no circumstances can it be intruded upon.”¹⁸

The national Department for Rural Development and Land Reform (DRDLR) announced that SPLUMA would be implemented on 1 July 2015, and supported initiatives in most provinces to develop provincial legislation and municipal by-laws to supplement SPLUMA. By early 2016, only the Western Cape Province had enacted SPLUMA-compliant provincial legislation,¹⁹ and only Cape Town, Mangaung, Tshwane and eThekweni, among the metros, had approved SPLUMA-compliant municipal-planning by-laws. This situation is changing fast, though, as other cities draw up and enact their by-laws.

The period of more than ten years of uncertainty and legal distraction came to an end with the enactment of SPLUMA. While the new law raises a number of practical questions as to how it will be implemented in practice, it ends years of speculation as to what sort of spatial planning and land use management would finally be enacted.

9 Current issues: what do we need to address?

This section identifies some of the challenges that must be met if we are to improve and strengthen the effectiveness of legal and fiscal instruments in achieving urban-spatial transformation. We are challenged to:

1. reduce and rationalise the multiple, diffuse and overlapping legal requirements for city planning;

¹⁶ Not yet reported, decided on 29 January 2016.

¹⁷ Paragraph 20.

¹⁸ Paragraph 28.

¹⁹ ‘SPLUMA-compliant’ is used in this sense merely to denote that the legislation was drafted with SPLUMA in mind. It does not necessarily mean that the legislation is actually compliant with SPLUMA. Only a court can really rule on that and, in any event, compliance with SPLUMA per se does not necessarily mean that legislation is also constitutionally sound.

2. implement and support institutional arrangements that support and promote effective city planning for transformation;
3. integrate urban-infrastructure investment;
4. agree on a broadly shared theoretical underpinning for city planning; and
5. link planning more strongly to implementation.

Each of these challenges is addressed in the subsections below.

9.1 Overlapping legal requirements

As discussed, there are currently three core spatial-planning instruments that are required in terms of legislation. They are the Integrated Development Plan (IDP) required by the Municipal Systems Act, the Municipal Spatial Development Framework (MSDF) required by the Spatial Planning and Land Use Management Act, and the Built Environment Performance Plan (BEPP) required under the annual Division of Revenue Act. Metros have become increasingly skilled at complying with the legal requirements attending each of these instruments, but this compliance has yet to translate into changed spatial patterns.

Each of these three instruments is analysed in detail in Appendix 1 of this report, in relation to the following factors:

- the legislative basis for the plan, i.e., which provision in which law requires cities to make and approve the plan;
- the plan's main purpose, i.e., what the city is meant to achieve through complying with the legal requirements;
- how the plan relates to other planning requirements, if at all;
- how the plan links to the municipal budget;
- the plan's legal effect on other processes and/or on land development; and
- the public-participation requirements of the plan.

At the heart of the city-planning system is a problem of unclear law. For example, SPLUMA introduces the requirement of a municipal spatial-development framework (MSDF), as part of the IDP required under the Municipal Systems Act. But the Municipal Systems Act itself also demands of municipalities that they compile municipal spatial-development frameworks. There are thus two instruments required via two different laws that have the same name but have different prescriptions regarding what should be in each MSDF and how each one should be compiled with. Arising out of frustration with the poor spatial (and other) outcomes of the IDP-based municipal-planning system, the BEPPs were introduced. The BEPP provisions of each DORA are silent on how the BEPP relates to other plans, such as IDPs and MSDFs, although they do specify that each year the BEPPs must be compiled in a format prescribed by the National Treasury. The BEPP Guidelines stipulate that the BEPP must be compiled in tandem with, and not in competition with or opposition to, the IDP (and MSDF).

A unique aspect of the BEPP is that the statutory mandate to prepare the plan is renewed annually, with the enactment of each financial year's Division of Revenue Act. This introduces unprecedented flexibility in relation to the scope

of the plan as well as the planning process. This flexibility is strengthened further by the power of the National Treasury to prescribe detailed, annual BEPP Guidelines for metros. This positions the BEPP as a more nimble and responsive planning instrument than plans that are enshrined in more traditional (and less flexible) legislation.

A system that addresses the three dimensions of city planning covered by these instruments—institutional, spatial and investment planning—through one integrated set of planning requirements regulated and monitored by one national authority should provide more efficient plan-making processes and more transparent decision-making processes. It would also have the distinct advantage of making the city-planning process more accessible to citizens, thereby empowering citizens to hold decision-makers to account for the implementation of planned activities.

9.2 Institutional arrangements for city planning

Five institutional issues arise in relation to city planning, each of which is discussed in more detail below. The five issues are:

1. the divergent policy intentions of national and city governments;
2. the crowded national-departmental space;
3. internal integration within metros;
4. an uncertain role for provinces; and
5. urban planning as the mandate of a rural-focused national department.

9.2.1 Divergent policy intentions of national and city governments

Increasingly, the courts have confirmed that *municipal planning* (and the executive decision-making that falls under that competence) is the responsibility of local government, i.e., of the metros. This judicial trend, encouraging more rather than less municipal decision-making, effectively disrupts the national legislative trend to increase the number of different plans that municipalities have to approve and implement.²⁰

Typically, national departments have sought to achieve local-level implementation of their particular policy priorities by legislating requirements for local government to develop a plan focused on that particular policy area. So we have seen, for example, local-level environmental, public-transport, water-services and housing plans enshrined in legislation. This pattern is consistent with our constitutional framework, which empowers national government to prescribe planning requirements through legislation. At least in theory, and frequently in practice, a tension emerges between the interests of the national

²⁰ The important Constitutional Court cases in which local government's power to exercise executive authority in relation to municipal planning are: *Johannesburg Metropolitan Municipality v Gauteng Development Tribunal and Others* [2010] ZACC 11; *Maccsand (Pty) Ltd v City of Cape Town and Others* 2012 (4) SA 181 (CC); *Minister of Local Government, Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd and Others* [2013] ZACC 39; 2014 (1) SA 521 (CC); *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others*; *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town and Others* (117/13) [2014] ZACC 9; 2014 (5) BCLR 591 (CC); 2014 (4) SA 437 (CC); and *Tronox KZN Sands (Pty) Ltd v Kwazulu-Natal Planning and Development Appeal Tribunal & Others*, not yet reported, decided on 29 January 2016.

department and of the municipality regarding the specific outcome of a municipal-planning instrument. To be sure, the municipality has to comply with the procedural requirements of the legislation, drafting and approving a plan that meets the national legislative requirements. Ultimately, though, the plan is the instrument through which the municipality can express its own policy objectives, and not necessarily those of the national department.

In relation to a legislative competence such as municipal planning the Constitution limits national government to prescribing standards and procedures for decision-making by municipalities. Yet, in practice, national departments interpret that power too widely, wanting to extend their influence as far as possible into the actual substance and content of municipal-planning decisions. This is an overreach and is not permitted; national government can prescribe how decisions are reached, what sort of procedures must be followed, but it cannot influence the outcome of actual decisions, which are the preserve of local government. Clear policy direction—strengthened, where appropriate, by legislation—is therefore needed to clarify the respective legislative and executive powers of the three spheres in relation to municipal planning.

The National Treasury has—for more than a decade—attempted to use its influence on the allocation of the national budget to achieve a more rational spatial strategy for the investment of public money, especially in cities. This ongoing initiative has been, and continues to be, valuable but remains fundamentally constrained by two factors.

- Firstly, the efficiency of spatially targeted investment of public money will always be diluted when it is not implemented within a spatial-planning and land-use-management regulatory environment that supports and complements it. If entity *x* is targeting its investment in location *y*, the efficiency gained from that investment will be weakened and perhaps even negated if other investments from both public- and private-sector sources are not similarly targeted and guided by the applicable regulatory frameworks for land-use management.
- Secondly, the National Treasury quickly exposes itself to accusations of mandate-creep when it translates its fiscal-allocation powers into what is effectively spatial planning through the back door. This move breeds resentment in other national departments (and cities and provinces),= and also stretches the capabilities of treasury officials, whose mandate is primarily to manage spending and investment rather than to achieve spatial outcomes.

9.2.2 Crowded national departmental space

Two types of national departments play a key role in relation to city planning: those that are responsible for specific sectoral policy concerns, and those with a more comprehensive and integrating mandate. Both types seek to address their respective mandates through laws that require cities to comply with statutory plan-making. Moreover, each of the sectorally concerned departments—such as those responsible for water, housing and public transport—requires a sector-specific plan. Often, but not always, the production and approval of this plan is a

precondition for the release of national funds to municipalities, for investment in infrastructure or other services in the municipal area. At the same time, those departments that aspire to a more holistic and integrated approach to municipal performance require plans that are ostensibly more integrated, such as IDPs, BEPPS, SDBIPs, and spatial-development frameworks. In practical terms, the widely shared objective of achieving better integration and alignment results in a flowering of more and more planning instruments and requirements. As the regulatory framework for city plan-making becomes more fragmented and variegated, so the goal of integration and alignment becomes more elusive.

There are also differences among the national departments themselves. While one department may wish to pursue a particular objective—typically, one characterised by significant investment in infrastructure—other departments may not share this objective. Those departments with an overall budgeting- and performance-management mandate (the National Treasury and the Department for Planning, Monitoring and Evaluation) might outrightly reject this policy objective, leading to actual tensions, whether overtly expressed or not. In this case, the integration-and-alignment struggle manifests on two planes: vertically, among national departments (as well as among metros), and horizontally, between national and city government.

An important intervention into this struggle was the adoption of the National Development Plan (NDP) in 2013. The NDP lays out a compelling plan for national development, but it does not address the underlying institutional difficulties that make integrated and “lined up” planning work in practice.

There has also been uncertainty as to where the mandate for *national* planning lies. The NDP falls under the Presidency. In terms of SPLUMA, however, the national Minister for Rural Development and Land Reform has the mandate to develop a national spatial-development framework. Without direct statutory backing, the Department of Human Settlements is pursuing a national Human Settlements Spatial Plan. There are ongoing high-level efforts within national government to rationalise this apparently fragmented situation²¹, but, soberingly, this is not a new difficulty. The problem of which branch of government is responsible for overall national-planning decisions, especially those determining the location of major new investments, has arisen frequently over the past twenty years²².

²¹ In 2015, for example, the Presidency has released a discussion document on the institutionalisation of planning in the current system of co-operative governance.

²² Some examples of the formal statements issued by both cabinet and parliament regarding the national-planning situation are set out below:

- In September 1994, the *Reconstruction and Development Programme White Paper* gave the responsibility for national planning of the country’s reconstruction and development to a Ministry that would provide a “more coordinated system of information-gathering and planning, [to] support the Government, its agencies and other institutions in development planning and change management strategies, as well as setting out a draft urban development policy and draft rural development policy.”
- The 2001 *White Paper on Spatial Planning and Land Use Management*, proposed that the Minister [of Land Affairs], in consultation with cabinet, should prescribe national spatial planning frameworks around particular programmes or regions.

The institutional home of national planning now appears to be largely, but not wholly, confirmed as the Department for Planning, Monitoring and Evaluation (DPME), located within the Presidency. The Minister for Rural Development and Land Reform has indicated a willingness to transfer responsibility for the national spatial-development framework (a SPLUMA mandate) to the DPME. Meanwhile, the Minister for Economic Development is charged with managing a Commission that will develop a national-infrastructure plan, and the Minister for Human Settlements continues to develop the national Human Settlements Spatial Plan. The picture therefore remains somewhat ambiguous, notwithstanding the advances achieved through the National Development Plan.

9.2.3 Internal integration at a municipal level

Each city administration is beset with some degree of internal conflict and contestation at both the technical and political levels. This is a common feature of local government anywhere in the world. This phenomenon has however reached debilitating levels in many South African cities. Regardless of the legal framework that governs planning, if the internal relations within the city are fractured or dysfunctional there are very slim prospects for the successful integration and alignment of legislative requirements with infrastructure-investment plans.

The advent of SPLUMA has galvanised metros into action, to step quickly out of their former role as *followers* of planning laws and into their new constitutional role as municipal-planning *law-makers*. While it is the cities' constitutional mandate to create more laws, unless this process is accompanied by a scaling back or re-orientation of national and provincial law in the sector, it will not improve the overall situation. Tempering cities' enthusiasm for proliferating by-laws is probably also a good idea, since they can become increasingly immersed in their own law-making, receiving very little in the way of norms, standards or guidance from provincial or national legislation.

The City of Cape Town's implementation of the first SPLUMA-era municipal-planning bylaw provides useful lessons. Spatial-planning and land-use-management decisions in the city are now regulated by three pieces of law: the by-law, the provincial Land Use Planning Act, and the national SPLUMA. In procedural terms, the city's by-law largely reflects the procedures and decision-making structures prescribed by SPLUMA. However, each of these three laws contains its own criteria for spatial-planning and land-use decisions. Every

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- In 2006, the National Spatial Development Perspective called on the Presidency to manage "national level potential analysis and prioritisation", with provincial growth and development strategies and municipal IDPs feeding the spatial implications of the national approach.
 - The 2011 SPLUMA empowers the Minister for Rural Development and Land Reform to "compile and publish a national spatial development framework" every five years (section 13[1]).
 - The *National Development Plan 2030: Our Future*, 2012, assumes a pivotal role for the Department of Performance Monitoring and Evaluation (now the Department of Planning, Monitoring and Evaluation) in ensuring the implementation of the NDP.
 - The Infrastructure Development Act, no. 23 of 2014, establishes a Presidential Infrastructure Coordinating Commission with the power to approve and implement a "national infrastructure plan" (section 4[a]).

planning decision in the city, then, if it is to be legally defensible and immune to judicial review, must evaluate three sets of criteria. At the end of the day, the decision-maker has to consider over fifty such criteria, irrespective of the size or impact of the decision being made.²³ Some of these criteria are very similarly worded and hard to differentiate. Decision-making effectively becomes more, and not less, complex and diffuse.

The obligation on metros themselves both to rationalise and streamline their regulatory interventions and to achieve stronger internal coordination of decision-making processes has to be fulfilled. While better planning outcomes demands contributions from all three spheres, the local sphere has considerable agency of its own that needs to be used to best effect.

9.2.4 Uncertain role for provinces

In terms of the Constitution, the provinces are empowered to make legislation in the area of *provincial planning*. Very few provinces have taken steps to execute this mandate, however. Gauteng, for example, has for many years struggled to propose provincial legislation that establishes a “statutory provincial IDP”. In Gauteng’s case, this difficulty is driven by the need to address the specific planning needs of the province’s “city region”, but other provinces, notably the Western Cape and KwaZulu-Natal, have encountered similar problems. In the case of the national-city axes of plan-making and decision-making, there has been almost no attention paid to the role of provincial planning. This situation is likely to change, since SPLUMA now expressly requires of each Premier that he or she adopt a provincial spatial-development framework, which framework must determine how and where provincial funds are spent and provincial programmes are implemented.

In practice, in some provinces, provincial planning has been seen as the responsibility of the provincial department responsible for Co-operative Governance. Typically the provincial department assumes responsibility for developing a planning framework that sets out the parameters and principles for municipal planning within the province. As the Constitutional Court has firmed up its view on the municipal planning powers of local government, it has consistently stressed that provinces must restrict their planning mandate to matters relating to the province as a whole, rather than to any individual municipality.²⁴

Thus it is likely to remain a contested issue within provincial-government structures. Provinces are however taking up the challenge put to them by the Constitutional Court and are exploring the parameters of their provincial-planning competence. The work of the Gauteng Planning Division in the Premier’s office is a good example of this: the highest level of provincial government is focusing on what it can do to promote spatial change in the Gauteng City Region.

²³ The metro’s Planning & Building Development Management department has drafted an internal decision-making matrix to support staff in the identification and interpretation of these criteria.

²⁴ See for example *City of Johannesburg v Gauteng Development Tribunal and others* and *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others*.

As provinces' understanding of their distinctive planning powers becomes clearer, so too will their approach to guiding and managing land development in cities. Contestation in these areas is inevitable. This pattern of contestation is unlikely to change in the near future. Provincial governments prefer that municipal plans comply with provincial spatial plans, assuming the cascading logic of a "higher"-level plan determining the contents of a "lower" one. This is at odds with the constitutional allocation of planning powers between the two spheres. Efforts should be made to strengthen the powers that provinces do enjoy in relation to municipal planning, rather than those that they clearly do not. There is, for example, considerable scope for provincial governments to draw up norms and standards for municipal planning, as well as to support and monitor the implementation of municipal planning.²⁵ Strengthening these capacities will enable provincial governments to address—as a key part of their provincial-planning mandate—the spatial-transformation challenges that a municipality acting according to its particular mandate for its particular territory might miss.

9.2.5 Urban planning as a mandate of the Department of Rural Development

For historical reasons, the mandate for spatial-planning legislation, irrespective of whether it applies to an urban or rural context, sits with the Department of Rural Development and Land Reform (previously the Department of Land Affairs). The Department is responsible for guiding and supporting the implementation of the Spatial Planning and Land Use Management Act of 2013, in line with the policy commitments made by the national cabinet in the 2001 *White Paper on Spatial Planning and Land Use Management*. The vision and mission of the Department are set out in the Department's 2014/2015 Annual Report:

- **Vision:** vibrant, equitable and sustainable rural communities.
- **Mission:** to initiate, facilitate, coordinate, catalyse and implement an integrated rural development programme.

The needs of the country's cities and their planning systems are thus not front-line priorities of the Department, which has a vision and mission directed specifically towards rural development. The officials in the Department's branch responsible for spatial-planning legislation do consciously strive to reflect urban-planning considerations in their work. In practice, however, it is difficult for the Department to make the necessary interventions in the intergovernmental context when the priorities of its senior actors lie in the rural-development context. For example, the Director General's overview of the Department's performance in 2014/2015 in that year's Annual Report does not mention spatial planning at all, be it urban or rural.²⁶ In the 2015/2016 Annual

²⁵ Where support and monitoring still fails to deliver results the province is empowered in terms of section 139 of the Constitution to intervene and take over responsibility for the municipal planning function in a municipality, although this is a universally unpopular option.

²⁶ Within the Department the responsibility for spatial planning sits under Programme 2: Geospatial and Cadastral Services. This programme received 7,77% of the Department's operational budget in

Performance Plan, the Department envisages using its mandate for spatial planning in the following manner: “The department is the de facto national land administrator and spatial planner. It could use land and spatial planning as levers to influence the targeting of priority rural areas for development.” Again, the prioritisation of rural development as the Department’s focal area of work is inescapable. The Department’s Strategic Goal 2, as reflected in the 2015/16 Annual Performance Plan, goes even further, emphasising the need to focus on improving land administration for rural areas.

9.3 Infrastructure investment planning

Ongoing efforts to consolidate the infrastructure grants allocated to metros—and supported by the BEPPs—are an indication of the need to improve infrastructure-investment planning. In this section, the multiple instruments that metros are required to use for infrastructure-investment planning are described. The misalignment of housing and transport infrastructure investment, a concrete example of the problems related to infrastructure-investment planning, is also discussed.

9.3.1 Infrastructure-investment planning split over multiple instruments

At the city level, there are currently four legislative requirements that a municipality plan for infrastructure investment must meet, many of which have been touched on above. They are set out again here in chronological order:

- **Municipal Systems Act:** the integrated development plan (IDP) has to identify “any investment initiatives in the municipality” and “any development initiatives [. . .] including infrastructure”, in addition to a “capital investment framework for the municipality’s development programmes” (regulations 2[1] and 2[4] of the IDP Regulations, 2001);²⁷
- **Municipal Finance Management Act:** the Service Delivery and Budget Implementation Plan (SDBIP) is required to be compiled annually by a municipality and must include a three-year capital-investment plan, broken down by ward;
- **Division of Revenue Act:** as a condition for the release of various infrastructure grants, each city has to compile a Built Environment Performance Plan (BEPP), which has to indicate, in relation to each grant-funded project, “the budgeted value of the project, the sources of funding for the project, location of the project with respect of the municipality’s integration zones, and planned expenditure in the municipality’s integration zones from each of the grants” (DORA, 2015, section 14[2]); and
- **Spatial Planning and Land Use Management Act:** the municipal spatial-development framework compiled in terms of this Act must “identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs for the next five years” (section 21[h]) and “determine a capital expenditure framework for the municipality’s development programmes, depicted

2014/2015. This percentage of the overall allocation remains consistent throughout the next three years, in terms of the Departmental MTEF (Annual Performance Plan, 2015/2016).

²⁷ Published under GNR 459 in GG 22328, 25 May 2001.

spatially” (section 21[n]). Section 12[6] of SPLUMA also specifies that spatial development frameworks—at all spheres—must “outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified”.

In theory, these are all part of one municipal-planning process. In practice, though, there are significant differences across municipalities. Even in those municipalities where the different requirements for infrastructure-investment planning are aligned, the costs and resources required to ensure that the same content is reflected in the four different processes, each of which moves according to its own timeline and its own reporting requirements, amount to an onerous burden. The task becomes especially burdensome when a city has to manage the implementation-pipeline of multiple projects at different stages of completion, with each set of regulatory requirements imposing its own set of compliance costs.

9.3.2 Misaligned city-making sectoral grants: housing and public transport

The misalignment of housing and public-transport infrastructure grants is widely acknowledged as a key factor in the perpetuation of low-density, inefficient and segregated urban development. The two national sector departments—Transport and Human Settlements—disburse grants to cities, or via provinces in the case of housing, in terms of each department’s respective conditions and prescripts. The investment of each of these two sets of funds should theoretically be consistent with each sector’s mandatory municipal plan, each of which should in turn be part of the approved IDP (see section 9 of the Housing Act, and section 36 of the National Land Transport Act). Similarly, the city, which since 2010 has been clearly empowered to implement municipal planning, should be able to use its IDP process to integrate the twin funding streams and twin project-planning processes in the housing and transport sectors, in order to achieve spatial change “on the ground”. If cities are unable to use the IDP process to integrate the two processes, the BEPP provides a further opportunity to do so, especially as the approved BEPP is a condition for the release of certain key grants, including the Public Transport Network and Human Settlements Development Grants and the Urban Settlements Development Grant.

Any potential problems should—at least in theory—be able to be addressed through cities asserting their municipal-planning powers more strongly, and by provincial and national authorities supporting the municipal-planning process more directly. Anecdotally, though, it appears that the national and provincial transport authorities are more inclined to integrate housing planning into transportation planning than the housing authorities are inclined to integrate transportation planning into their priorities. This discrepancy suggests that the prospects for integrated housing and transport planning will depend on the better alignment of the human-settlements planning powers currently held by provincial governments with the transport planning currently carried out by metros.

9.4 A theoretical basis or model for city planning

City planning has been burdened by two main challenges. Firstly, there has been difficulty in identifying a compelling spatial model for undoing the legacy of apartheid. The apartheid model is by now well understood, but how do we move towards a new model? Secondly, the planning method prescribed in the various laws is linear and slow to change, which is in sharp contrast to the unpredictable, fast-changing and dynamic context within which South Africa's cities are evolving.

9.4.1 Finding a post-apartheid spatial model for our cities

While calls to transform the spatial legacy of apartheid have been ongoing, there have been very few cogent proposals on how to achieve the desired spatial outcomes. Instead there was an optimistic hope that if the relevant IDP called for a reversal of apartheid spatial trends, this reversal would indeed follow. It did not take long to realise that intention alone was not sufficient. This realisation was followed in some quarters by the insistence that, in order to realise hopes of spatial transformation, a closer link between the spatial framework, the forward-planning instrument, and the land-use-management scheme (or development-control instrument) was needed. This approach is reflected in the Spatial Planning and Land Use Management Act, which is explicitly intended to “give the spatial framework teeth” through a requirement that the provisions of the scheme effectively mirror those of the spatial framework, and vice versa. Whether or not this will work in practical terms is still to be seen. The SPLUMA approach is, in many ways, a continuation of the earlier optimism. It is unlikely to result in the desired change: the primary role of a land-use-management scheme is to determine the restrictions on land use in particular zones—that is, it focuses on the limits to development in an area, which makes it very hard to use these provisions to stimulate or facilitate investment in a desired pattern of development.

A new idea to achieve spatial transformation has been the Urban Network Strategy (UNS), a strategy that emerged from the Neighbourhood Development Programme's work—specifically, its concept of the Urban Network Approach. This approach is one “based in spatial planning and investment prioritisation techniques. It involves identifying defined elements within an urban network and then prioritising these in order to focus planning, investment and management to achieve spatial transformation”.²⁸ Diagrammatically, the Urban Network Approach is represented below in Figure 6, where the pink nodes and corridors represent the focal points for the spatial targeting of public investment, especially transportation and housing infrastructure.

²⁸ Internal National Treasury report dated March 2015: 'Towards an Urban Investment Strategy for the National Treasury'.

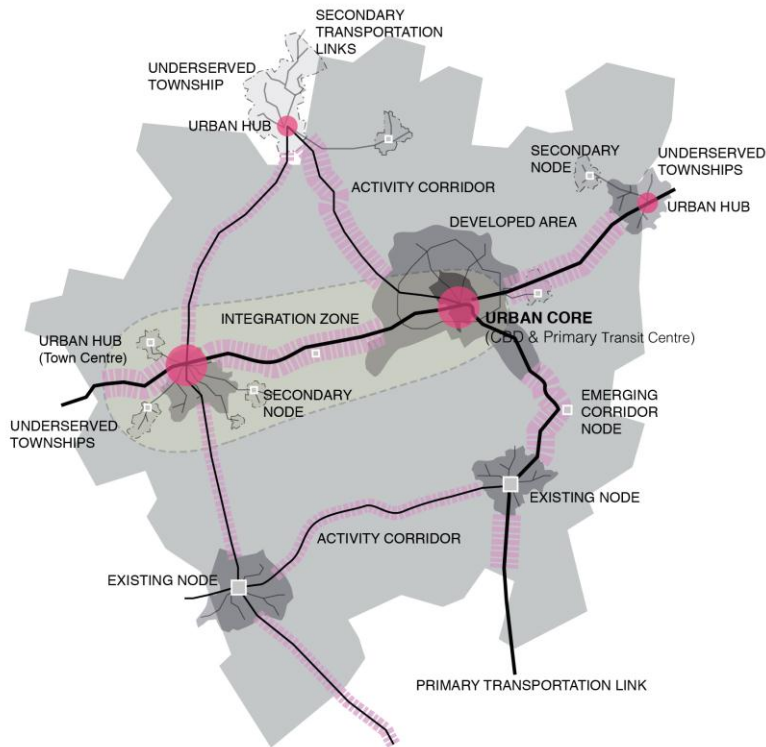


Figure 6: Urban Network Concept

The UNS focuses on the spatial targeting of investment. At least conceptually, it is more likely to achieve the desired outcomes than the SPLUMA-based approach, which is predicated on the alignment of forward planning and regulatory instruments and thus based primarily on barriers and limits to investment rather than on actual levers for investment. In the City of Johannesburg, the UNS approach is reinforced by the city’s Capital Investment Management System (CIMS), adopted by the city as a decision-making tool to ensure that there is alignment between the city’s capital budget and its spatial-planning priorities.

Cities need specific guidelines and a specific policy framework for achieving spatial transformation. If the UNS is this policy framework, then that needs to be communicated unambiguously, and its implementation needs to be supported. If the UNS is to be but one part of an arsenal of strategies at a city’s disposal, then the complementary strategies need to be identified and supported. In addition, key issues at the heart of the UNS need to be clarified. For example, there needs to be clarity regarding the different concerns and mandates of local government in relation to planning at different scales, taking into account the different approaches to be adopted for city-wide planning as opposed to precinct-level planning (and project implementation). Also, both the UNS and the BEPP system rely heavily on each city having “integration zones”. This term, however, is not defined in legislation, despite it being used widely in, for example, the 2015 DORA and its provisions relating to BEPPs.²⁹ While some cities have adopted an

²⁹ There is a definition of integration zone in the online Urban Network Strategy documents, to which reference is made in the BEPP Guidelines that the National Treasury publishes in terms of section 14 of DORA.

intuitive approach to what an integration zone can or should be, it is a term that needs to be unequivocally defined in the applicable legislation if it is to fulfil its potential role of moving South Africa towards spatial integration. The 2016/2017 BEPP Guidelines refer to two other types of “targeted space” that must be addressed in the BEPP plan and process: “marginalised areas (informal settlements, townships and inner city areas) and growth nodes (commercial and industrial nodes)”.³⁰ These terms would also benefit from a tighter and clearer delineation of their scope and meaning.

Professor Alison Todes examines the approach of the City of Johannesburg, in the form of its 2008 Growth Management Strategy, as an example of a city integrating its strategic spatial plans to its infrastructure-investment programme in order to achieve long-term and fundamental spatial change.³¹ In her article on the subject, she stresses that “the idea of linking spatial planning and infrastructure development is not new”.³² Indeed it has been a dominant feature of town-planning practice for more than a century. She points out, however, that over this long period, the linkage has been characterised more by disappointing outcomes than by successful implementation.

Relying on infrastructure layouts to determine spatial outcomes, and particularly the use of “land use/transit links”, has proved harder than expected, even in countries such as the Netherlands and Australia. “There are,” Todes reminds us, “relatively few well-documented cases of spatial planning-infrastructure links in developing countries”, with the exception of the well-documented city of Curitiba in Brazil.³³ She goes on to highlight that the success of the Curitiba model “depended on decades of consistent implementation made possible by a stable local political regime,” a condition that she confirms is “relatively unusual internationally”. In any event, the Curitiba success was somewhat less impressive than it is often made out to be, especially from the perspective of the sort of spatial integration that South African cities must achieve. Todes argues that the action-planning approach adopted in many Asian countries, in which a longer-term spatial plan informed a shorter-term five-year Physical and Environmental Developmental Plan that sets out a phased programme for urban expansion, may provide a sufficiently robust model to develop further.³⁴ This approach has also, however, been criticised for failing to achieve meaningful spatial change. In addition, it has proved to be a difficult model to sustain, demanding frequent reviews and updates, and extensive, ongoing inter-agency coordination and alignment.

Todes concludes that there is no one solution to the challenge of integrating infrastructure investment and spatial planning. In her use of the example of the City of Johannesburg, she points out the difficulties in using a well-integrated approach to influencing private-sector investment decisions, and suggests that

³⁰ *Guidelines for BEPP 2016/17 – 2018/19* at page 5.

³¹ Todes, A. (2012). New Directions in Spatial Planning? Linking Strategic Spatial Planning and Infrastructure Development. *Journal of Planning Education and Research* 32(4): 400-414.

³² At page 401.

³³ At page 402.

³⁴ At page 403.

these difficulties weaken the potential impact of the approach in terms of spatial impact and socio-economic integration.³⁵ She also underscores the dynamic and responsive nature of the planning process in the city, which follows from a recognition of some of the limits of the earlier approach: the city is currently engaged in a different approach, relying on the planning department's dominance in the municipal-planning process to achieve the desired patterns of integration and transformation.³⁶ Todes notes that the ability of the City of Johannesburg's planning department to drive new planning methodologies was possible because of "significant political support and a relatively stable policy environment". These are supporting conditions that are, she points out, "vulnerable to shifts" in the future.³⁷ She uses this point to emphasise that "linking spatial planning and infrastructure [. . .] requires more than deepening the technocratic basis of planning: it requires considerable engagement with stakeholders and within and outside of government institutions and an understanding of the politics associated with these processes."³⁸ She concludes her article with cautionary advice: "[W]hile linking strategic spatial planning and infrastructure has commonsense appeal and may give planners useful levers to influence urban spatial change [. . .] the potential for these approaches is likely to vary contextually, and both their role and impact may be more partial than anticipated."³⁹

9.4.2 Exploring new approaches to city-planning methods

Underlying the difficulties experienced in implementing the current regulatory framework for city planning is an outdated understanding of how planning should work in relation to a city's development. City planning, in all the applicable regulatory frameworks, has as its starting point a static plan that represents desired interventions in space and links them to an implementation programme of one sort or another. It is assumed that the plan, once approved and generally endorsed by citizens through a participatory process, provides a compelling basis on which to guide day-to-day decision-making, whether in relation to the regulation or financing of development. The laws provide for plans to be reviewed from time to time, with different review intervals prescribed for different planning instruments, but the underlying position is that executive decision-making by the city must always be evaluated against the applicable plan (or plans). This position sets up unintended consequences. Firstly, it promotes an overly comprehensive approach to planning inputs. Because the plan is thought to determine the outcomes of subsequent decision-making, it fuels a compulsion to insert as much material into the plan as possible. Secondly, this understanding of the plan as a static guide to future decision-making strips the planning process of the flexibility that is inevitably needed in the dynamic context of fast-growing cities.

The planning philosophy reflected in South African legislation is typical of most urban-planning laws internationally. It assumes that a planning authority (in

³⁵ At page 409.

³⁶ Ibid.

³⁷ Ibid.

³⁸ At page 410.

³⁹ Ibid.

most cases, a municipality) will follow a rational process of analysing the status quo, identifying challenges and opportunities, projecting a probable future situation and then making a plan that commits the authority to particular types of decisions—relating both to capital investment and management of the urban environment—for the duration of the plan’s validity. There is necessarily a high level of uniformity in implementation; all municipalities, or all municipalities falling within a specified category, follow the same rules, make the same plans, stick to the same time periods for their plans’ validity, and will repeat the process at the end of the prescribed period. This uniformity stands in marked contrast to the experience of the private sector, where firms can choose whether or not they plan and then *how* they will plan.

A recent review by the Network for Business Sustainability South Africa (NBS)⁴⁰ identifies the ways in which firms in South Africa and globally are planning for sustainability and growth.⁴¹ The NBS review confirms that a business is much freer in its ability to select the planning approach that best suits its particular context—in place, time and economic cycle—than a body such as a municipality. For businesses, “planning approaches are driven by the underlying belief systems of an organisation”. Of course, for a regulated organ of government like a municipality, the belief systems of the regulator—in this case, parliament, as advised by the respective national departments—are what really matter.⁴² Nevertheless, it is useful to understand the ways in which firms, on the basis of their particular belief systems, use planning in the long term to guide the nature and content of their short- to medium-term strategies. The NBS review identifies three underlying perspectives from which planning belief systems arise:

- **Rationalism:** “[R]ational planning is founded on systematic analysis, considering the options, evaluating information and integrating it into an organisation’s existing operations. Prediction is a hallmark of the rational school of thought and superior strategies are believed to be due to significant attention to detail, more frequent analysis, scanning for trends and evaluation of alternatives.”
- **Naturalism:** “[Natural planning,] by contrast, comes from an innate desire to be part of nature. It emphasises that organisations as living systems should approach planning as an organic system, which regenerates itself through natural processes, such as feedback loops, fast responses and adaptation to changing environments to co-exist in harmony with others. Some researchers have also suggested a ‘sustaincentric’ paradigm that focuses on natural AND human (social, economic) sustainability, and views them as integrated.”
- **Humanism:** “[Humanism] arises from an underlying belief that human action shapes the environment and that instead of attempting to predict

⁴⁰ NBS is a global thinkthank, focusing on Canada, Chile and South Africa, which brings together each country’s major business corporations to promote ways of planning better for business sustainability in the face of changing environment and financial contexts.

⁴¹ Network for Business Sustainability (2014) *Planning for a shared vision of a sustainable future: a systematic review*. This can be found at nbs.net/knowledge.

⁴² In South Africa, the Constitutional treatment of *municipal planning* as a Schedule 4B legislative competence, does give municipalities some discretion, in terms of the power to make municipal planning by-laws, but this is within the parameters established by national legislation’s requirements, norms and standards.

an unknowable, uncertain future, organisations exert control through visionary and transformative approaches to influence the outcome.”

The NBS review then draws four major planning approaches that companies adopt, either individually or in combination, on the basis of the particular belief system or systems dominating at the time. The planning approach selected by a firm reflects its particular need for predictability and control as it plans for future growth and sustainability. Different firms will have different needs, depending on their particular needs for predictability and control. Each of the four planning approaches is explained in more detail below:

- **Projection.** This is the approach adopted by risk-averse companies with a relatively confident view of how the future will unfold. It is probably the corporate-planning approach most similar to the planning approach reflected in current municipal planning. This approach is best suited to a high-predictability environment. The planning environment for cities is one of relatively low predictability, though, particularly in terms of the availability of financial resources for implementation. Some cities are better able to predict their future financial capacity, on the basis of the type and number of infrastructure grants that they anticipate receiving over a particular period. Other cities, less dependent on grant finance, are more vulnerable to the market forces that drive cities’ economies.
- **Adaptation.** Assuming a high level of unpredictability, this approach consists of short planning horizons, flexible strategies and risk reduction. It is essentially an incremental approach, dealing with issues as they arise. Another term for this is “emergent planning”, or planning for things as they emerge. In practice, much municipal planning, especially in smaller cities, follows this approach, even though the legal framework prescribes a more rational and inflexible approach—that is, one more akin to the “projection approach” described above.
- **Shaping the future.** This approach, like the projection approach, assumes a high level of predictability, but it is shaped by a high degree of confidence that the firm can change the predicted patterns, in order to achieve an alternative outcome. This approach is heavily dependent on the ability of the organisation to persuade external and internal stakeholders to support the alternative future and so make it a reality. Many South African city plans aspire to this approach, but struggle to engage stakeholders and partners effectively and encourage them into shared visions and partnerships.
- **Transformation.** Also intended for a low-predictability context, this approach is largely opportunistic, relying on the development of partnerships and shared visions to transform practices and behaviours as and when the opportunity arises. This approach does require that strong partnerships have already been established and that there is a shared commitments between the planning organisation and stakeholders to co-create a different future.

Elements of each of these private-sector planning approaches resonates with the challenges and pressures facing cities. The NBS review makes it clear that:

different planning approaches are not mutually exclusive [. . .] [and] organisations may develop planning mechanisms that draw upon more than one approach or find that as the external environment changes that they need to change their approach.”⁴³

This observation is particularly relevant to cities, where the complexity of the range of functions performed by a municipality demands different planning methods for different areas of work, and where the external environment can change, sometimes fundamentally, due to policy changes, natural disasters or macroeconomic conditions. However, the planning processes and plan contents typically prescribed by legislation do not allow for a city to adopt a more responsive or incremental approach.

There is an inherent tension between a planning system that is strong on flexibility and incremental adaptation, and one that makes it possible for a city to make long-term plans for growth—particularly, the financing of the infrastructure needed for that growth. The widespread rejection of a rigid “master” planning approach that prevailed in the mid- to late twentieth century has created a vacuum for the financiers of infrastructure, who need long-term assurance that a city will pursue a particular pattern of infrastructure investment with reasonable consistency and predictably. The planning regulatory framework should enable municipalities to select the planning approach that best suits their particular mix of needs and opportunities, in order to deliver more effective and appropriate outcomes.

Applying the categories provided in the NBS review to the metro municipal-planning environment reveals an immediate problem. At the level of the **planning belief system**, cities are encouraged by legislation to follow the path of *rationalism*: the starting points of systematic analysis and existing operations are the hallmarks of the current legislative framework. Clearly there are prudent arguments for anchoring city plans in this belief system: it is relatively risk free, and it is pragmatic. But it does not enable the planning system to be informed by feedback loops and change its priorities quickly, or to effect fundamental changes to approaches and instruments, both of which responses would be possible in a system more anchored in the planning belief system defined by *naturalism*. Nor does it enable the planning organisation to pursue the “visionary and transformative approaches to influence outcomes” that the system defined by *humanism* envisages. These shortcomings of the rational belief system that necessarily underpins municipalities’ planning approach are largely inescapable, however. Municipalities are not firms. They cannot risk public funds (or a political mandate) in the way that firms can risk shareholder interests. The long-term nature of infrastructure-investment planning demands that there be a degree of rigidity in planning for the future. But this does not mean that there is no space for innovation, or for learning from private-sector planning approaches.

⁴³ At page 13.

Each of the **planning approaches** identified in the NBS review can provide guidance for the identification of an approach that will be better fit the needs of South African cities. Together, they draw attention to the three approaches that are currently less easy for cities to adopt: *adaptation*, *shaping the future* and *transformation*. In relation to each of these approaches, there are specific elements that can be incorporated into the essentially rational planning belief system that circumscribes municipal planning. Incorporating these elements will require either legislative clarification or policy reform. The elements that have the potential to engender a new municipal-planning approach are as follows:

- Provisions to enable greater flexibility in response to emerging and changing conditions can be introduced through legislative or policy reforms that provide greater guidance regarding the annual (or more frequent) review of IDPs and recognise the BEPP's capacity to more directly respond to a changed context. Clarifying and confirming the relationship between the BEPP and the IDP will also go a long way towards allowing the planning framework to be more responsive to unpredicted change.
- The current regulatory frameworks are premised on the assumption that the engagement with plan-making stakeholders and partners is primarily a communication between the municipal council and its "communities". The central importance of community buy-in for planning proposals and of community response to planned interventions is inviolable and must not be negated—but the frameworks provide almost no guidance on how to engage effectively with the private sector, and the land-development industry in particular. Here there is scope for policy reform and guidance that encourages both new forms of cooperation between cities and the private sector in long-term planning and more effective instruments for implementing projects in partnerships between the city and the private sector (and, where relevant, other spheres of government). These reforms would fall squarely within the *shaping the future* and *transformation* approaches.

9.5 Linking planning to implementation

The value of an urban-planning process lies in the implementation of the plan. Plans that are developed purely in order to comply with legal requirements but that do not lead to changed patterns of decision-making and investment are, at best, a waste of resources and, at worst, a deception of citizens that creates false hopes and unrealistic expectations through plans that are not tenable. In relation to urban challenges, the National Development Plan (NDP) asserts that "many [. . .] are not the result of a vacuum in policy, but rather insufficient institutional capacity and lack of strong instruments for implementation."⁴⁴ Four challenges are identified here as particularly important for strengthening the link between planning and implementation. These areas are:

1. Linking planning to land-use management;
2. Linking planning to budgets;

⁴⁴ National Development Plan, at page 238.

3. Linking planning to the development and release of public land; and
4. Linking planning to financial performance.

Each of these challenges is addressed in the subsections below.

9.5.1 Planning and land-use management

The NDP correctly highlighted the disconnect between urban spatial-planning and land-use management and made the point that “the legislation that regulates land-use management is largely unreformed and dates back to apartheid.”⁴⁵ The flurry of law-making that followed the coming into effect of SPLUMA in 2015 has weakened this argument slightly, since there are now more examples of post-apartheid legislation dealing with land-management. Nevertheless, the challenge of linking the objectives and desired outcomes of urban-planning exercises with the provisions of the land-use-management schemes being developed under SPLUMA remains substantial.

SPLUMA requires that any new land-use-management scheme must be “consistent with” the municipality’s spatial-development framework (SDF).⁴⁶ This requirement is already a cause for concern among municipal planners, who are uncertain whether this implies that every time a municipal SDF is approved there must be an automatic amendment of the relevant land-use-management scheme, to ensure consistency between the two entities. Whether uncertainty is simply something that both municipal planners and members of the public dislike in a municipal-planning system, or whether the SPLUMA requirement really does introduce a new layer of administrative work for municipal planners who are already struggling to handle current workloads, remains to be seen. But this example is helpful because it illustrates the point that, notwithstanding the implementation of SPLUMA, serious practical concerns remain in relation to the linking of planning and land-use management. These concerns are not impossible to address, but if they are not tackled directly by national government the effect will be different cities adopting differing approaches. This will lead to greater uncertainty, not less, and will make the linking of planning and land-use management more difficult.

The way a metro operates its land-use-management system impacts directly on its capacity to influence and guide private-sector investment decisions. When a land-use-management scheme oversupplies usage and development rights across a wide area, the metro is unlikely to achieve targeted investment in the identified precincts or zones. When a scheme *undersupplies* rights, the resulting transaction costs and uncertainties discourage investment altogether. To date, very few metros have realised the potential of land-use-management schemes to more consciously promote and encourage investment in particular areas, to take the spatial-targeting ideas that run through most spatial-development frameworks and translate them into land-use-management provisions. Without this step, spatial targeting in spatial-development frameworks is effectively weakened.

⁴⁵ At page 244.

⁴⁶ Section 25 of SPLUMA.

Introducing change and innovation into the land-use-management sector is technically and legally challenging for municipalities. Clear and unambiguous guidance regarding this process has to be incorporated into national legislation. Without such guidance, it is unrealistic to expect more than a handful of metros to take the risks involved in being innovative with land-use-management instruments.

9.5.2 Planning and budgets

The underlying rationale behind the introduction of the BEPP was to strengthen the link between the plans produced by a metro and the municipal budget. The relevant provisions of the Division of Revenue Act do not specify that the BEPP should fulfil this role, which the Municipal Systems Act assigns to the IDP, but the annual BEPP Guidelines, issued in terms of the Division of Revenue Act, do indeed link cities' plans directly to their BEPPs.⁴⁷

The achievement of the BEPP, at least in some cities, in successfully introducing a disciplined linkage of the planned development and management objectives of a city with its budget process represents an important breakthrough. Questions still need to be asked, though, about why it was necessary for an instrument like the BEPP to be introduced to achieve this linkage when the Municipal Systems Act has been demanding the same outcome from municipalities for fifteen years. Both cities and the national and provincial departments that work with them to roll out development programmes will benefit from a single clear legal basis for linking the provisions of one municipal plan to the prescriptions of cities' budgets.

The full potential of cities to implement municipal planning will be realised once their plans not only link to their own budgets but also have traction in the budgets of provincial and national government. The National Development Plan proposes a system in which each sphere's plans are "translated into spatial contracts that are binding across spheres of government."⁴⁸ This proposition opens up a debate around how to encourage provincial and national departments to synchronise their investment plans with those of city governments, as reflected in their city budgets.

9.5.3 Planning and public land

For more than twenty years, cities have called for the release and development of specific parcels of strategically located and underutilised land that is held by provincial or national government, or by state-owned enterprises. These calls are motivated by cities' ambitions to achieve more efficient and integrated urban development, to address the legacy of apartheid through residential development, and to realise the full economic potential of land that is otherwise underutilised.

A complex web of institutional, legal and financial obstacles has made it very difficult for cities to recruit these land parcels into their long-term plans for spatial transformation. As a result of these land parcels remaining stubbornly

⁴⁷ Section 14 of DORA.

⁴⁸ At page 252.

resistant to cities' plans, significant opportunity costs arise. The inability to plan for this land's development also plays a role in promoting more space-extensive and sprawling patterns of urban expansion.

The growing recognition of cities' municipal-planning powers—both in recent legislation and in the decisions of the Constitutional Court—effectively strengthen cities' hands in relation to land use. Further impetus is needed, though, to achieve the incorporation of public land into city plans, and the support of national government is an essential part of that impetus.

9.5.4 Planning and financial performance

Planning to achieve developmental outcomes is futile if there is no money to invest in them. This money can come from national-government grants, a municipality's own resources (raised from a number of sources that include municipal property rates, and charges on infrastructure and borrowing), or from private-sector investment in land-development projects. In each city, the mix between these three sources varies. In all cities, more money is needed for investment in infrastructure and service provision.

The IUDF succinctly sets out the financial challenges facing cities:

- “Suboptimal own-revenue performance and expanding consumer debtors;
- Inappropriate fiscal incentives in the system of intergovernmental transfers;
- Unfunded mandates, which could increase with the devolution of further functions;
- Weak effective demand for borrowing by municipalities; and
- Emerging constraints and opportunities for deeper private sector partnerships.”⁴⁹

The 2016 municipal budget has confirmed that substantial increases in national-government grants are unlikely in the foreseeable future. Attention must therefore turn to municipal revenue-sources and private-sector finance, which in turn demands that we think about planning differently. We are not simply planning to list all the projects that we propose to spend grant finance on. Planning now has to look at promoting the sorts of investment that can complement cities' visions for change; it has to accommodate and facilitate land-development partnerships with the private sector.

Metros have to refocus their attention on raising their own revenue streams, on borrowing, and on ensuring that developers fully cover the infrastructure-investment costs needed to support their projects.⁵⁰ Three activities have direct implications for the way spatial planning is executed. They do not necessarily call for legislative change; instead, they can be achieved by cities exercising their own municipal-planning powers. Metros are therefore challenged to use the city-

⁴⁹ At page 107.

⁵⁰ The draft policy framework and draft legislation for a uniform set of rules for Development Charges, as mentioned in the 2016 Budget Speech, is a key example of such an initiative.

planning processes provided for in the applicable legislation to develop planning approaches and methods that, firstly, promote more fiscally efficient forms of development and, secondly, and perhaps most crucially, draw private-sector finance into infrastructure investment and development.

10 Recommended actions: the way forward

Taking into account the “theory of change” diagram illustrated in Figure 5 above, the recommendations set out below are intended to establish the necessary conditions for improving and strengthening the regulatory framework (or the enabling environment), and for allowing metro-level planning to achieve the desired outcome of efficient and more inclusive cities. This will demand changes in the practices of all three spheres of government, and they will have to be implemented over time, in relation to legislation, policy and institutional arrangements.

10.1 Alignment with NDP and IUDF

Reforming the planning regulatory environment is not sufficient to achieve spatial transformation, but it is necessary. As the National Development Plan points out in its chapter on human settlements, “spatial transformation is a long-term project.” Once achieved, however, it would “fundamentally transform job and livelihood prospects [and . . .] reduce travel time and cost between home and work, and increase mobility for poor households to access better job and education opportunities. This in turn will reduce poverty and inequality.”⁵¹ To reach this point, a steady and consistent programme of legal, fiscal and institutional reform is needed to create an urban spatial-planning system that is fit for purpose in twenty-first century South Africa.

This position receives strong support in the *IUDF Implementation Plan 2016-2019*.⁵² The implementation plan identifies broad medium- and long-term priorities and then, more specifically, a set of short-term priorities for the 2016-2019 period, linked to the Medium-Term Strategic Framework (MTSF) priorities.⁵³ The Implementation Plan’s short-term priorities relate directly to the issues raised here in this report: namely, the need to “[e]stablish[] the legislative, policy and planning environments for the IUDF”.⁵⁴ Accordingly, the Implementation Plan calls for a “national committee [. . .] to drive the identified objectives and actions, and report regulatory into the relevant national structure(s) on progress made”. The IUDF’s short-term priorities target 97 urban municipalities. All the metros are included in this group.

10.2 Cities’ planning-alignment action steps

The NDP and IUDF implementation plans provide a broadly supportive framework for aligning and coordinating metros’ planning regulatory

⁵¹ At page 259.

⁵² Available at <http://www.cogta.gov.za/?programmes=the-integrated-urban-development-framework-iudf>.

⁵³ Section 5 of the Implementation Plan deals with short-term priorities.

⁵⁴ At page 24.

frameworks. In and of themselves they are insufficient, however, since they still have to address a much broader range of urban and other contexts.

An approach to planning alignment that works for metros, and specifically addresses their needs, is therefore proposed here. This approach needs to fit within the broader framework for urban development envisaged in both the NDP and the IUDF. The approach, together with the proposed actions for driving policy, institutional and regulatory reform, should be incorporated into a document for cabinet approval. Because the next five-year IDP period will begin shortly, after the local-government elections in August 2016, there is an urgent need to implement the proposed approach sooner rather than later. With the BEPP as a central plank of the city planning platform, the need to inform the provisions of the 2017 Division of Revenue Act that deal with BEPPs is also an urgent priority.

The proposed approach to improving and strengthening planning alignment for metros consists of the core elements laid out below.

1. Consensus on the substantive changes to metro-planning practice that have to be achieved in order for the cities to meet both NDP and IUDF objectives. In broad terms, these substantive changes include the following:
 - a. **Planning method:** strategic identification of investment and urban-management priorities, stakeholder consultation, integration of sectoral-planning requirements, communication of planning priorities to stakeholders and other spheres;
 - b. Emphasis on **planning outcomes:** more emphasis on measurable, realistic and spatially targeted outcomes, less emphasis on compliance with regulatory requirements for compliance sake only, strengthened linkage between planned urban investment and budget allocations of all three spheres, drawing on the BEPP model for planning in relation to planning carried out by provincial departments, policy and legal reform in order to ensure optimal use and development of land and property assets owned by all three spheres of government;
 - c. Embedding the **Urban Network Strategy** across the cities: strengthening the Built Environment Value Chain, identifying an agreed theory of change for South African urban transformation; and
 - d. **One city, one plan:** a single, aligned spatial-planning framework, coupled with a single-city capital-investment framework which is respected by both other spheres of government.
2. With consensus on substantive changes achieved, the institutional, legal and policy changes needed over the next five years should be identified. This process includes the following steps:

- a. **Clarify national government's mandates and powers** with regard to city spatial planning: identify principles and norms for aligning national investment priorities in urban development, and confirm the range of realistically possible interventions for allocating and confirming oversight, policy direction, regulation, monitoring, and support for city spatial planning among national departments;
- b. **Confirm provincial governments' mandates and powers** with regard to city spatial planning: identify the role to be played by provincial governments in aligning investment in different sectors of provincial powers, such as education, health and housing, with city spatial-planning objectives; identify the provinces' role in regulating city spatial planning as well as providing monitoring and support.
- c. **Rationalise municipal roles** in spatial planning and urban management: resolve the duplication and overlap of functions within metros, develop a model for the city-wide alignment of spatial and investment planning, integrate funding streams for public-transport and housing expenditure, align compliance requirements for the IDP (Municipal Systems Act) and the BEPP (DoRA), and clarify the respective roles of cities, other spheres and parastatals in the development of public land for spatial transformation.
- d. **Prepare for private-sector partnership** in urban development: develop strategies for improved collaboration between and among metro governments, communities and developers, in order to address city-planning goals and identify principles for partnerships in urban development.

The broad steps outlined above must be reflected in a report to cabinet, to be submitted within a few months. It would make sense for this report to be submitted as part of the Department of Cooperative Governance's report to cabinet on the progress of IUDF implementation.

This report must be accompanied by a detailed strategy that sets out the key steps to be carried out over the next five years, identifying which actions will lead to which outcomes, and clearly outlining the respective responsibilities of each of the relevant national departments as well as each sphere of local government. This strategy will then serve as the basis for the design of comprehensive programmes of action to be implemented across all three spheres.

10.3 Mandate to drive the initiative

The Cities Support Programme will initiate this process, but in time it must be taken over by a body with a broader intergovernmental mandate. This could be an interdepartmental spatial-coordination committee within the Presidency, which was proposed in the National Development Plan, or it could be the "national committee" proposed in the *IUDF Implementation Plan 2016-2019*.

Irrespective of the institutional vehicle selected, the involvement of the current Planning Alignment Task Team will be essential to ensuring a successful outcome. After discussion and engagement among spheres and departments, a detailed workplan would need to be developed with clear time-frames, indicators, institutional responsibilities and linkages to other processes, and this workplan would need to be approved by cabinet. It would also need to be approved by the Planning Alignment Task Team.

11 Appendix 1: The legal requirements for city planning

11.1 The IDP

11.1.1 Legislative basis

The Integrated Development Plan is required of every municipality in terms of section 25 of the Local Government: Municipal Systems Act, no. 32 of 2000. The whole of that Act's Chapter 5 is dedicated to the IDP, spelling out the purpose, contents and plan-making procedure for the plan. Further detail is provided in the Local Government: Municipal Planning and Performance Management Regulations, 2001.

11.1.2 Purpose of the IDP

The IDP is described in section 25 as “a single, inclusive and strategic plan for the development of the municipality”. It is particularly important for spatial planning and land development, however. Steytler and De Visser (2014)⁵⁵ emphasise how the “Constitutional Court underscored the importance of IDPs for land use planning and management” by quoting from the Court's judgement in the case of *City of Johannesburg v Gauteng Development Tribunal* (often referred to as “the DFA case”):⁵⁶

The role played by these plans [IDPs] in the administration of land is important. They provide for, among other things, the alignment of resources utilised to supply basic services to local communities. There can be no doubt that any development undertaken with a municipal area affects the budget of the municipality concerned, particularly in the supply of services.

11.1.3 Relationship to other planning requirements

Subsection 25(1)(A) of the Systems Act requires the IDP to “link, integrate and coordinate plans”. It must also “take into account proposals for the development of the municipality”. The IDP is thus expressly envisaged as part of a network of plans, with itself at the centre.

Section 24 directly tackles the question of overlapping planning requirements for municipalities. Firstly, it requires a municipality's planning to be “aligned with” and “to complement” the plans and strategies of all organs of state, including other municipalities (subsection 24[1]). Secondly, it places a responsibility on the national and provincial spheres, when considering legislation that imposes a duty on municipalities to engage in planning: a) to ensure that the proposed legislation complies with the IDP chapter of the Systems Act and, b) to consult with municipalities in the implementation of the proposed legislation and to “take reasonable steps to assist the municipality” in meeting the requirements of the Systems Act.

One of the specified “core components” of the IDP is that “the council's

⁵⁵ *Local Government Law of South Africa*, Lexis Nexis, at 7-4.

⁵⁶ 2010 (9) BCLR 859 (CC) at paragraph 83.

development strategies [. . .] must be aligned with any national or provincial sectoral plans and planning requirements binding on the municipality in terms of legislation” (subsection 26[d] of the Systems Act). A complex challenge for the IDP therefore already emerges in the legislation: in terms of section 25, it must “link, integrate and coordinate plans”, and in terms of section 26 it has to be “aligned with” a range of planning requirements imposed on municipal government through national and provincial law. Very few of these terms have been interpreted by the courts, and there is consequently considerable uncertainty as to precisely how they should be interpreted in the context of each city’s IDP.

11.1.4 Link to municipal budget

A defining characteristic of the IDP—indeed, for many people, the rationale for having an IDP at all—is that it has to inform and be integrated with a municipality’s budget. So, subsection 25(1)(c) confirms that the IDP is “the general basis on which annual budgets must be based”. Under the core components of the IDP listed in section 26, it is specified that there must be a “financial plan, which must include a budget projection for at least the next three years”. The IDP regulations provide more detailed requirements for the financial plan in addition to the three-year budget projection: specifically, the financial resources for both capital expenditure and operating expenses, and a financial strategy for the municipality (regulation 2[3]). The spatial development framework that must form part of the IDP must also, in terms of IDP regulations, include “a capital investment framework for the municipality’s development programs” (regulation 2[4][e]).

The Systems Act’s injunctions around the role of the IDP in relation to the budget are reinforced in the MFMA. Subsection 21(2) places a broad duty on the mayor, in preparing the annual budget, to “take into account the municipality’s IDP”. This broad obligation is reinforced by a number of direct requirements in the MFMA that the budget and the IDP be aligned and that, where the IDP is amended, this be reflected in the budget. In the prescribed format for municipal budgets—as required in Schedule A of the 2009 Municipal Budget and Reporting Regulations, promulgated in terms of the MFMA—a mandatory component of the budget is an “overview of alignment of annual budget with IDP”. Similarly, these regulations require the executive summary of the municipal budget to include “the municipality’s priorities and linkages to the IDP” as well as “key amendments to the IDP”.

The MFMA provides more detail than the Systems Act regarding the need for three-year budgeting, in terms of which the municipality must always present its budget for the current year in relation to budget forecasts for the following two years (see section 178[1][c] of the MFMA). This reinforces the requirement that there be integration between the IDP and the budget. Both documents have to look beyond the dictates of the immediate future, and can be adapted by the municipality to reflect changing needs and opportunities.

11.1.5 Legal effect

Section 35 of the Systems Act describes the IDP as “the principal strategic planning instrument which guides and informs all planning and development,

and all decisions with regard to planning, management and development”. The IDP “binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency between a municipality’s IDP and national or provincial legislation, in which case such legislation prevails”. The IDP also “binds all other persons to the extent that those parts of the [. . .] plan that impose duties or affect the rights of those persons have been passed as a by-law”.

11.1.6 Public-participation requirements

There are two public-participation steps in the IDP approval. Firstly, the municipal council has to “adopt a process [. . .] to guide the planning, drafting, adoption and review of its integrated development plan” (subsection 28[1]) of the Systems Act). Before adopting this process, the municipality has to “consult the local community” (subsection 28[2]). Secondly, once the process has been adopted, it has to be followed as the municipality compiles and approves its IDP. This process must include at least the following steps: consultation with communities to identify their “needs and priorities”; local-community participation in the drafting of the IDP; and the consultation of other organs of state, traditional authorities and other role players. The IDP regulations do not add much to the requirements of the Act, other than regulation 3, which prescribes a procedure of IDP amendment.

11.2 The MSDF

11.2.1 Legislative basis

The first thing to note in relation to the municipal spatial-development framework is that there are two laws that require municipalities to have such a framework. The first of these is the Municipal Systems Act, which requires municipalities to approve as a core component of the IDP “a spatial development framework which must include the provision of basic guidelines for a land use management system for the municipality” (subsection 26[e]). All the provisions relating to the IDP and outlined above in paragraph 11.1 therefore apply to the spatial-development framework that the municipality develops as part of its IDP. The contents of that SDF are set out in detail in regulation 2(4) of the IDP regulations. The second legislative basis for a municipal SDF is SPLUMA, and that is the focus of this section of this paper. Section 20 of SPLUMA instructs every municipality to “adopt a municipal spatial development framework [. . . which] must be prepared as part of a municipality’s IDP in accordance with the provisions of the Municipal Systems Act”. That the MSDF has to be prepared by a municipality in terms of SPLUMA, and that this process has to be carried out as part of the IDP, in terms of the Systems Act, is a source of potential confusion and uncertainty.

11.2.2 Purpose of the MSDF

SPLUMA requires four different types of SDF: a national SDF; nine provincial SDFs; and unknown quantity of regional SDFs; and a municipal SDF for each municipality. Chapter 4 of SPLUMA deals with all these four types of SDF. Section 12 of SPLUMA outlines what all SDFs should do, but listed below are some of the more relevant purposes of SDFs for municipalities, which should, *inter alia*:

- “interpret and represent the spatial development vision” of the municipality;
- be “informed by a long-term spatial development vision statement and plan”;
- “represent the integration and trade-off of all relevant sector policies and plans”;
- “guide planning and development decisions”;
- “guide [. . .] a municipality in taking any decision or exercising any discretion in terms of this Act or any other law relating to spatial planning and land use management systems”;
- “contribute to a coherent, planned approach to spatial development” in all spheres; and
- “provide direction for strategic developments, infrastructure investment, promote efficient, sustainable and planned investments by all sectors and indicate priority areas for investment in land development”.

Subsection 12(5), in direct relation to municipal SDFs, states that these should “assist in integrating, coordinating, aligning and expressing development policies and plans emanating from the various sectors of the spheres of government as they apply within the municipal areas”.

The Development Principles enshrined in section 7 of SPLUMA are binding on all decisions exercised in terms of that Act (as well as other laws “regulating spatial planning and land use management”). These principles are:

- spatial justice;
- spatial sustainability;
- efficiency;
- spatial resilience; and
- good administration.

Any MSDF adopted in terms of SPLUMA must therefore give effect to these principles, which can be characterised as driving spatial transformation and promoting a general consideration for operating within human, financial and ecological resource limits.

11.2.3 Relationship to other planning requirements

The main link to other planning requirements is the direct reference to the SDF, which is a component of the IDP. The intention of SPLUMA is that the two SDFs should essentially be one and the same.

Section 22 of SPLUMA addresses the potential conflict that might arise between what a municipal SDF proposes and what is contained in a provincial SDF. In this case, the Act requires that the conflict is resolved through the provisions of the Intergovernmental Relations Framework Act, with a view to the eventual “revision” of both SDFs “in order to ensure consistency”. How this conflict resolution will happen in practice is not yet known, other than that the underlying negotiating process will be a key factor determining the outcome.

11.2.4 Link to municipal budget

Section 21(n) of SPLUMA includes as part of the MSDF a “capital expenditure framework for the municipality’s development programmes, depicted spatially”. Section 21(p) demands that the MSDF include an implementation plan, which comprises of, among other things, “sectoral requirements, including budgets and resources for implementation”. Although neither of these provisions specifically refers to the municipal budget, there is an implicit link.

11.2.5 Legal effect

In addition to the legal effect that adheres to any component of an IDP, which effect will also adhere to the MSDF, there are legal impacts that are set out in section 22 of SPLUMA. In this section, there is a prohibition against municipal-planning tribunals or other land-development-approval authorities making “a decision that is inconsistent with a municipal spatial development framework” (subsection 22[1]). Subsection 22(2), however, allows for a deviation from the provisions of a MSDF by a municipal-planning tribunal or other authority “only if site-specific circumstances justify a departure” from the MSDF.

11.2.6 Public-participation requirements

Section 20 of SPLUMA makes it clear that the procedural requirements applicable to the IDP apply to the municipal SDF as well. However, subsection 20(3) adds the specific requirement that the municipality must advertise the proposed SDF and then invite and consider written representations that are subsequently received.

11.3 The BEPP

11.3.1 Legislative basis

The BEPP is currently required in terms of section 14 of the 2015 DORA from all metropolitan municipalities, with a due date of 29 May 2015. Each year’s DORA stipulates a date by which BEPPs must be completed. BEPPs were initially required from cities indirectly, through the 2011 DORA, where the requirement appeared in the grant framework for the Urban Settlement Development Grant. It first appeared in the body of a DORA in 2014 (section 9[3]).

11.3.2 Purpose of the BEPP

The legislated purpose of the BEPP is to require metropolitan municipalities to incorporate projects funded by a set of national and provincial grants into one plan and then to use that plan as a precondition for the release of those grants to the cities. The explanatory memorandum to the 2015 DORA requires the BEPP to “show how the municipality will ensure alignment between its different grant-funded programmes and how it will address related policy and regulatory matters”. Implicit in the BEPP approach is the assumption that cities will use their own revenues together with grant funding to achieve spatially targeted outcomes. Essentially, the BEPP has to show how the city uses its national infrastructure grants, through a pipeline of projects, to implement spatial change via the municipal-budget process.

Section 14 of the 2015 DORA prescribes the detailed requirements for a city to prepare and adopt a BEPP. This provision must, however, be read alongside the

BEPP Guidelines, issued in section 14(2)(a) of the 2015 DORA, which empowers the National Treasury to prescribe the format in which BEPPs must be drawn up by cities. The Guidelines are the result of the National Treasury exercising its power to determine the format of a city's BEPP.

11.3.3 Relationship to other planning requirements

The Division of Revenue Act does not set out any specific linkages between the BEPP and other planning requirements. The 2016/2017 BEPP Guidelines propose, at page 3, that “the BEPP is intended to contribute to and enhance existing statutory planning instruments and [. . .] not duplicate or replace them”. In an important paragraph (on page 4), the Guidelines argue for a particular role for the BEPP in relation to other planning requirements, and envisages the BEPP as the instrument for achieving greater alignment, intergovernmental coordination and impact in the city-planning process:

The IDPs covers functional and institutional planning, as well as the Spatial Development Framework as regulated by SPLUMA. The Budget and SDBIP are requirements of the MFMA. The linkages between the plans are generally weak and the results of all of this planning seldom yields the outcomes and/or impacts that we seek as a nation or at the city level. *The BEPP is a response to this challenge* [emphasis added].

11.3.4 Link to municipal budget

The BEPP is a precondition for the transfer of the following grants to a municipality:

- Urban Settlements Development Grant (section 9[3] of DORA); and
- Public Transport Network, Neighbourhood Development Partnership and Integrated National Electrification Programme Grants (section 10[9] of DORA).

The BEPP has to include all projects funded, whether in full or partially, by the following grants (section 14[1] of DORA):

- From national government: Integrated City Development Grant, Urban Settlements Development Grant, Public Transport Network Grant, Neighbourhood Development Partnership Grant, and the Integrated National Electrification Programme Grant; and
- From provincial government: the Human Settlements Development Grant.

Section 14(4) of the 2015 DORA requires that the city “report in its annual financial statements on the expenditure from each of the grants mentioned [. . .] in each integration zone [. . .] against its built environment performance plan”. This requirement underlies the importance of a very tight linkage between the provisions of the BEPP and the municipal budget. The introductory section of the 2016/2017 BEPP Guidelines similarly emphasises the role of each of the grants to be reflected in the BEPP, stating that each one “supplements municipal budgets”. The point is not made expressly in the 2016/2017 BEPP Guidelines, but it is clearly implied in the section that deals with the contents of the BEPP (section 3), which stresses that the BEPP must reflect both capital and operating expenditure that is over and above that drawn from the grants listed in section

14 of DORA. To achieve the objectives set out in section 3 of the Guidelines, a city will have to draw on its own financial resources in addition to those provided by national and provincial government via the grants system.

11.3.5 Legal effect

The chief legal effect of the BEPP is that the grants specified above at 11.3.4 cannot be released to cities until their BEPPs are finalised. Compliance with the BEPP requirements is therefore a key legislative requirement for the disbursement of significant parts of each city's capital budget.

11.3.6 Public-participation requirements

There are no public-participation requirements for the BEPP.