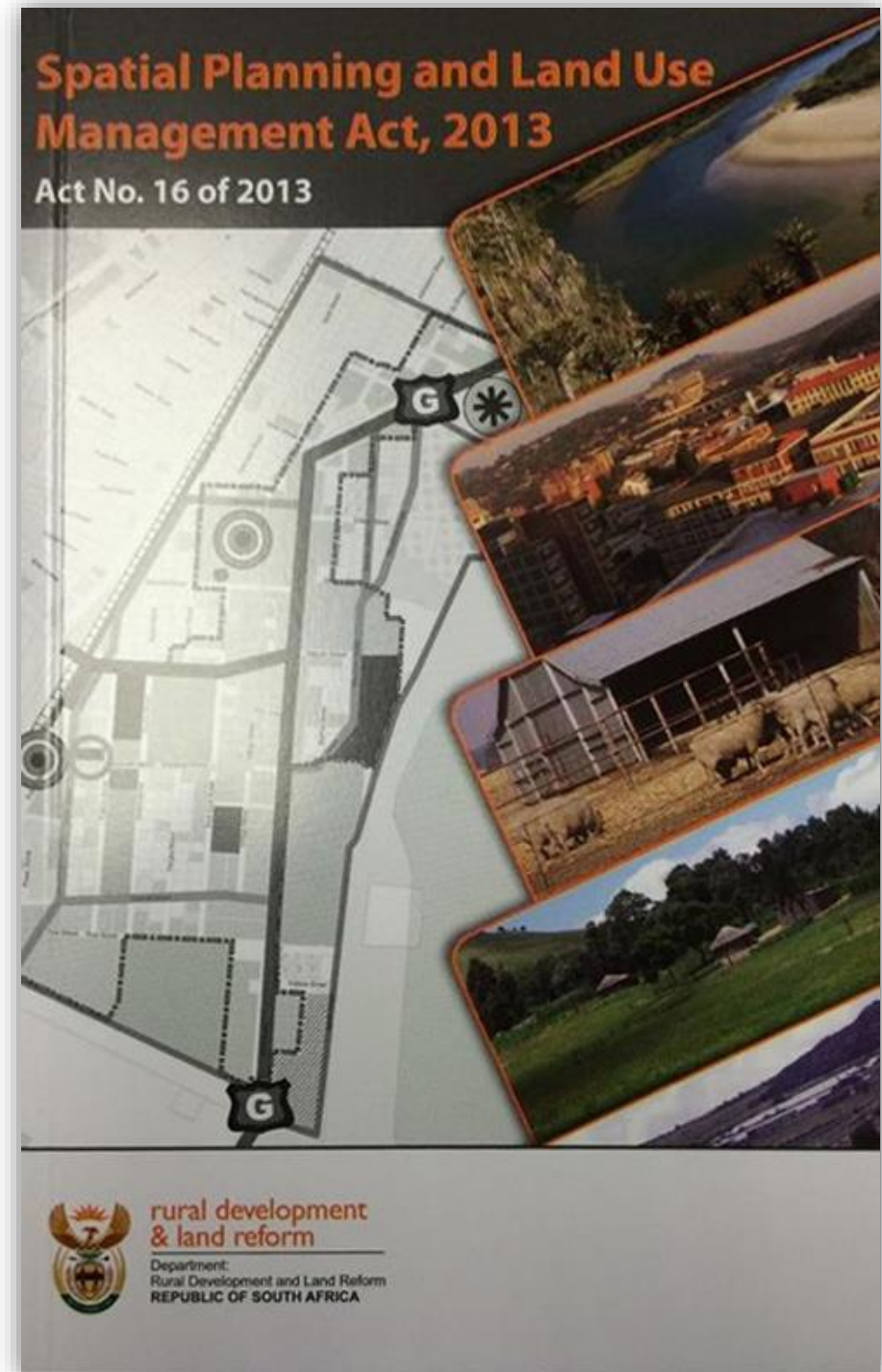


# *Preparing for SPLUMA Implementation*

The Main Points of Discussion

Lectures by Stephen Berrisford and Jaap de Visser – Hosted at UCT CPD Programme,  
31 March and 1 April 2015

Presentation compiled by Rebecca Cameron



# Acknowledgements

This is to acknowledge that the content in this presentation is from a course run by the University of Cape Town's Continuing Professional Development Programme which was convened and taught by Stephen Berrisford and Jaap de Visser on 31 March and 1 April 2015.

This presentation was written up and compiled by Rebecca Cameron. The content of this presentation is a combination of the lecture notes written by Stephen Berrisford and Jaap de Visser and notes taken during the lectures and group discussions by Rebecca Cameron. All diagrams have been developed by Rebecca Cameron to visually represent certain aspects of the content.

# Overview

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# Introduction

## Spatial Planning and Land Use Management Act (SPLUMA) of 2013

Enacted in August 2013

Set for implementation on 1 July 2015

Regulations gazetted on 23 March 2015

- Municipal Planning Tribunal Regulations

*Aim: To provide for inclusive, developmental, equitable and efficient spatial planning at the different spheres of government*

Two-day course to build knowledge and capacity around the implementation of SPLUMA: lectures and discussions

Presumption: Basic knowledge of SPLUMA and its contents

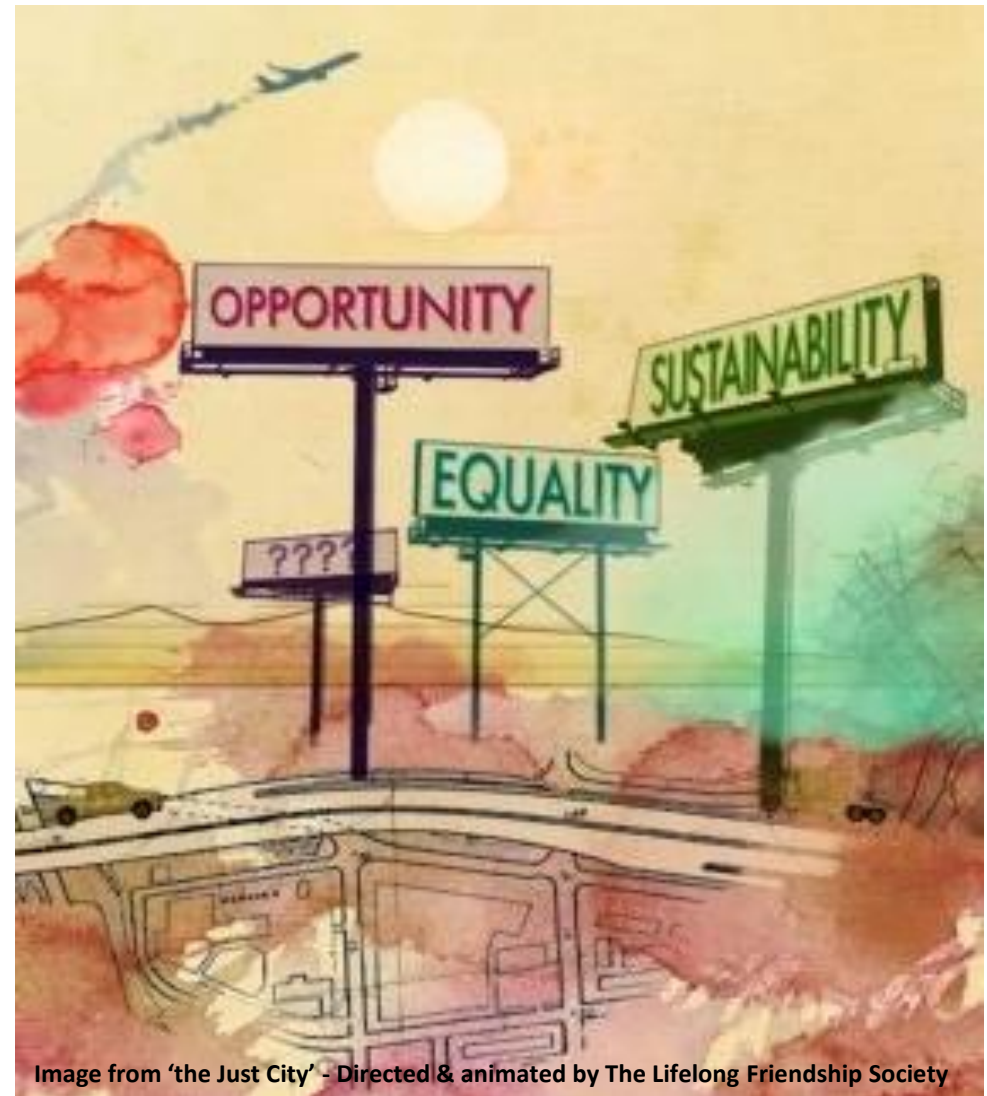


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# Historical Overview

Long and difficult road to SPLUMA dating back to 1909 (British Town Planning Laws adopted)

**1994 – 2000:**

Contestation between spheres of government and their relevant mandates.

**1990s: Democracy allowed for open discussion around what is Town and Regional Planning and which sphere is responsible**

While often planning laws are better at stopping development than enabling it, the Development Facilitation Act (DFA) of 1995 was created to try to enable the Reconstruction and Development Programme (RDP) – still in use in many provinces and municipalities.

**DFA of 1995: Influenced the discussion of various issues which SPLUMA aims to address too**

Principles, planning tribunals, land development objectives for decision-making.

**SPLUMA repeals the DFA of 1995**

**While planning laws developed, other land management laws were developing**

NEMA and EIA Regulations; IDP Process and the Municipal Systems Act of 2001.

# Historical Overview

2000 – 2010:

Debate over which sphere is responsible for which aspects of land use management

Little guidance over the definitions of RSA Constitution Schedule 4 and 5, Parts A and B.

**2010: Constitutional Court Decision in *City of Johannesburg v Gauteng Development Tribunal***

Definition of Municipal planning to include land use management and development planning.

Land use planning is a Municipal function – Province cannot trump Municipal decisions.

**2013: SPLUMA enacted**

**2015: Provinces trying to develop their own planning laws in line with SPLUMA**

SPLUMA cannot repeal Provincial Acts or Municipal By-laws (both remain valid until Constitutional Court decides otherwise).

In terms of SPLUMA Section 10(2), Provincial Acts may differ to SPLUMA.

**Municipalities need to do the same but due to the current capacity shortages, national government (and some provincial governments) is drafting a set of model by-laws for municipalities to adopt.**



# Constitutional Questions

## 1. What is Municipal Planning?

*City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010*

From a common understanding, it includes the control and regulation of land use (land use planning) and forward planning (IDPs and SDFs).

## 2. Can National Planning Approval override Municipal Planning Approval?

*Maccsands Ltd v City of Cape Town 2012*

No, each sphere is independent but should work together under the principle of co-operative governance.

Approvals are required from each relevant sphere of government (depending on the activity and regulations).

## 3. If a development has an impact beyond the jurisdiction of the Municipality, does the Province have the right to intervene and override the decision?

*Minister Of Local Government, Environmental Affairs And Development Planning Of The Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd 2013*

No, land use planning is a Municipal function, therefore Province can not intervene. Province must make laws to govern decision-making rather than overriding decision-making.

# Constitutional Questions

## 4. Can Provincial Government decide appeals with regard to developments that are bigger than the municipality?

*Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council and Others 2014*

No, as the appeal process is part of land use management decision-making which is a municipal function, not a provincial function. Province is to set laws to intervene rather than to interfere spradically with municipal decision-making.

### Further questions:

#### 1. SDFs and potential conflict?

No cases yet. SPLUMA and Provincial Regulations guide process whereby each sphere is to participate in the development of SDFs at the three spheres of government.

#### 2. Municipal By-laws?

Municipalities are only sphere constitutionally empowered to make and adopt detailed laws pertaining to land use management (National, Provincial and District may assist) – different approaches in each province.

#### 3. Conflicting Laws?

Principles: Both laws are valid until one is dismissed by the constitutional court. Prior to litigation, use principle of co-operative governance – Constitution Chapter 6 (150).

#### 4. Traditional Areas?

Not constitutional for a chief to hold the authority to make land use management and development decisions.



# SPLUMA as a Framework Law

SPLUMA is considered a framework legislation rather than a comprehensive overhaul

SPLUMA returns planning to pre-1990's thinking – 'plan everything'

Heavy on SDFs (at National, Provincial, Regional, Municipal scale)

Wall-to-wall Land Use Management Schemes

**SPLUMA as a framework law:**

Recognises provincial competencies for law making (Schedule 1 dictates what provinces should address – questionable as this is decided by the Constitution and the Constitutional Court).

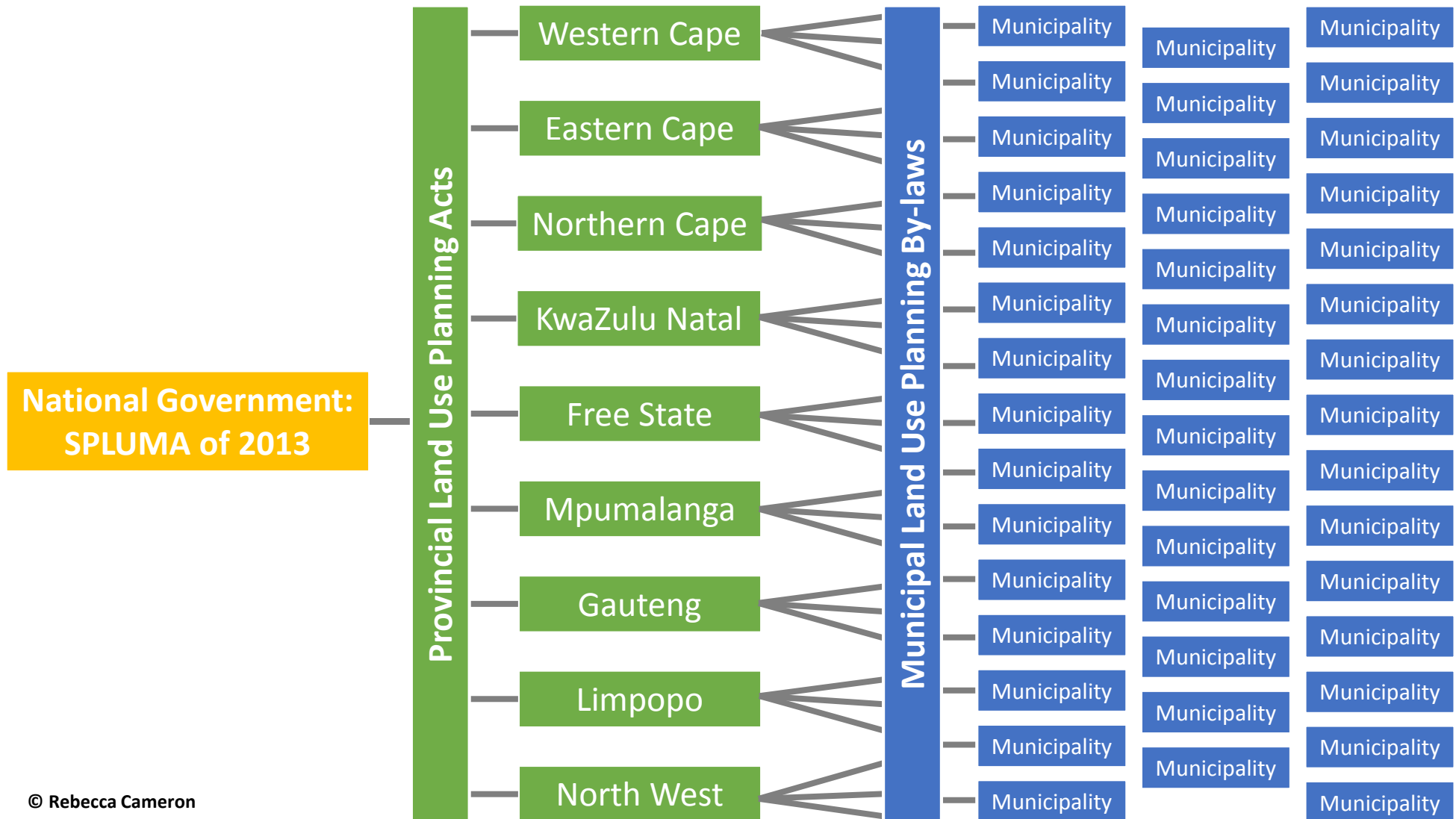
Section 7 Development Principles: allows for alignment with decisions made in terms of other laws.

Section 8 Norms and Standards determined by National Minister (to allow for consistency across the country).

Land Development Management decision-making is not stipulated as a precise process but does regulate who should do what (Provincial acts and by-laws to define process further).

**NB: Municipal planning cannot contradict national/provincial laws but national/provincial laws cannot compromise or impede municipal decision-making (circular conflicts of interest).**

# SPLUMA – a three-sphere system



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# Alignment with other RSA Legislation

**SPLUMA operates in parallel to other laws**

**Only repeals national laws**

Removal of Restrictions Act, Physical Planning Act, Less Formal Township Planning Act and Development Facilitation Act.

**Municipal Systems Act of 2000 and SPLUMA:**

SPLUMA adds to what MSA stipulates about SDFs and IDPs – does not contradict MSA (relevant should be integrated eventually).

**NEMA and SPLUMA**

Similar wording used in both.

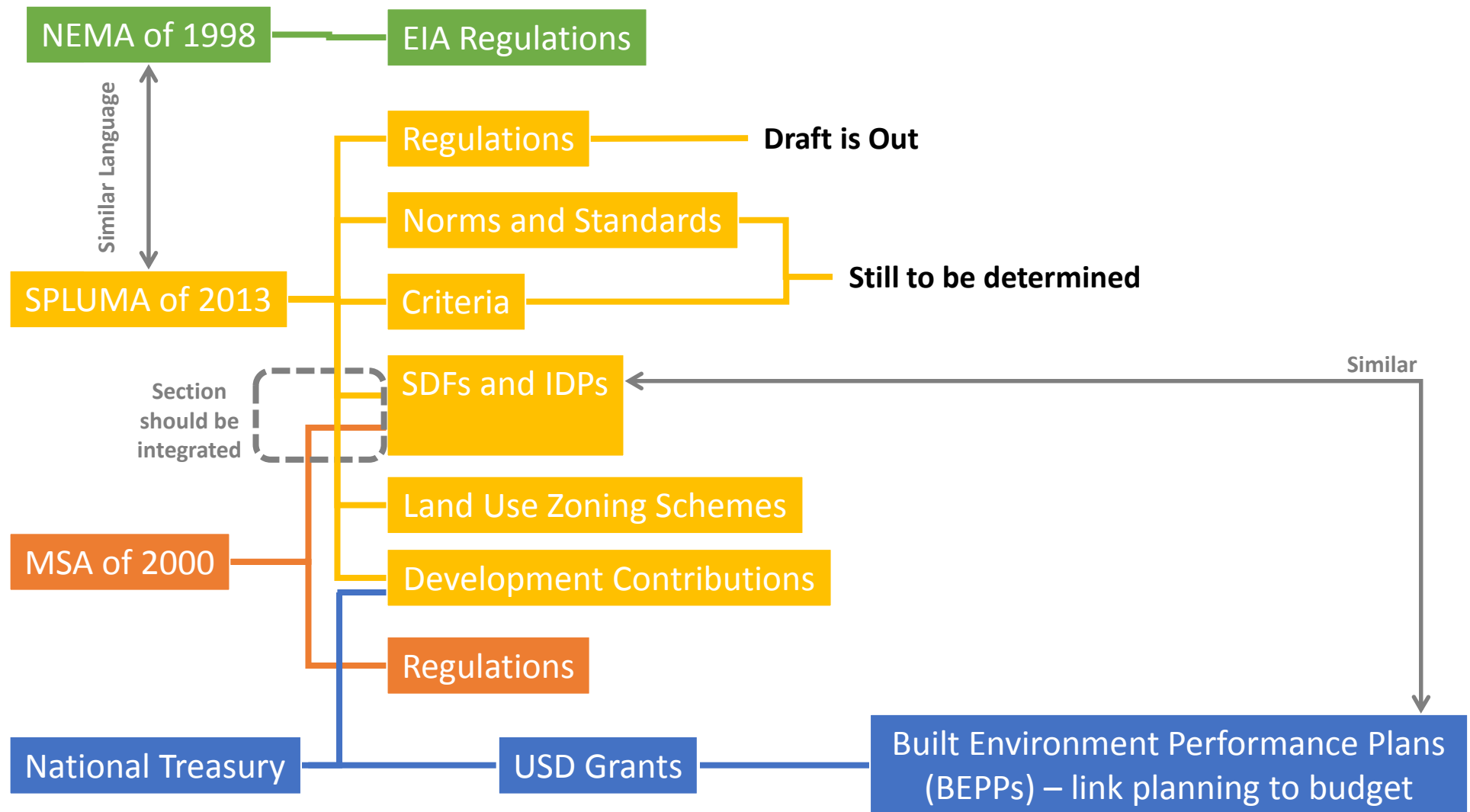
Both look for ways of a more integrated process of authorisation (allow for the alignment concurrent and parallel processes).

**Infrastructure Development Act of 2014 and SPLUMA**

Overlap of Strategic Integrated Projects (SIPs) in the IDA with projects being of a 'National Interest' in SPLUMA.

But raises constitutional questions around land use authority as a municipal, not a national, mandate.

# SPLUMA as part of a Legislative Architecture for Land Use Planning



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# Principles and Norms and Standards of SPLUMA

Found in Chapter 2, Section 7 and include the following high-level principles (show a reflection in the DFA principles) – reinforces a South African legal legacy.

1. Spatial Justice
2. Spatial Sustainability
3. Efficiency
4. Spatial Resilience
5. Good Administration

Assumption: planning leads to development, therefore the disadvantaged must be included in planning. Can be problematic if planning does not lead to development.

Provincial laws may add to or build on principles.

## Norms and Standards of SPLUMA (Section 8) are set by the National Minister of Land Reform and Rural Development

Set to enable national consistency.

These are binding to all and provinces cannot override these.

# Decision-making under SPLUMA

## SPLUMA: Municipal planning powers devolved to Local Government (District or Local Municipality)

District Municipality: generally forward planning only.

Provincial Minister can authorise land use planning to district municipality if local municipality does not have capacity or capability.

### Decision-makers:

#### 1. Municipal Government

1. Municipal Council: to adopt MSDF, land use scheme and establish and appoint Municipal Planning Tribunal and the rules in which it operates for the five-year term of operation.
2. Municipal Planning Tribunal (MPT): compulsory requirement, no politicians or councillors, certain categories of decisions can be delegated to an official, must be institutionally located where municipal planning authority is held (district or local).
3. If there are capacity constraints at Municipal Level, a Joint Municipal Planning Tribunal (JMPT) may be formed.
  - Voluntary: not necessarily at district scale but can be if agreed upon by all municipalities in a district's jurisdiction.
4. Designated Official: can be designated decision-making power by MPT or JMPT.
5. Executive Authority (mayor, committee, special committee): decide on appeals from MPT, JMPT or delegated official, give policy guidance, monitor work of officials.



# Decision-making under SPLUMA

## 2. Provincial Government

1. Section 10 of SPLUMA: Province supports, monitors and strengthens municipalities.
2. Responsible for Provincial SDF.
3. Premier responsible for technical support and dispute resolution.
4. Role is further defined by Provincial Laws and Regulations.

## 3. National Government

1. Regulatory, planning and monitoring powers.
2. Responsible for National SDF.
3. Must gazette Norms and Standards and Criteria for selection of 'National Interest' Projects.
4. Minister to advise on 'National Interest' projects by joining in the municipal process as a third party or to take their own decision.

# SDFs and Land Use Schemes

## Each sphere of government requires a Spatial Development Framework (SDF)

With the potential for a Regional SDF (as identified by the National Minister) which does not adhere to provincial boundaries and,

a Provincial Regional SDF (as identified by the Provincial Minister) which is within a province.

*Worst Case Scenario: Six SDFs would be applicable to a single area*

## SPLUMA adds to existing requirements on SDFs from the MSA of 2000 (along with further additions made by Provincial Acts and Municipal By-laws):

Content (Sections 12 and 21)

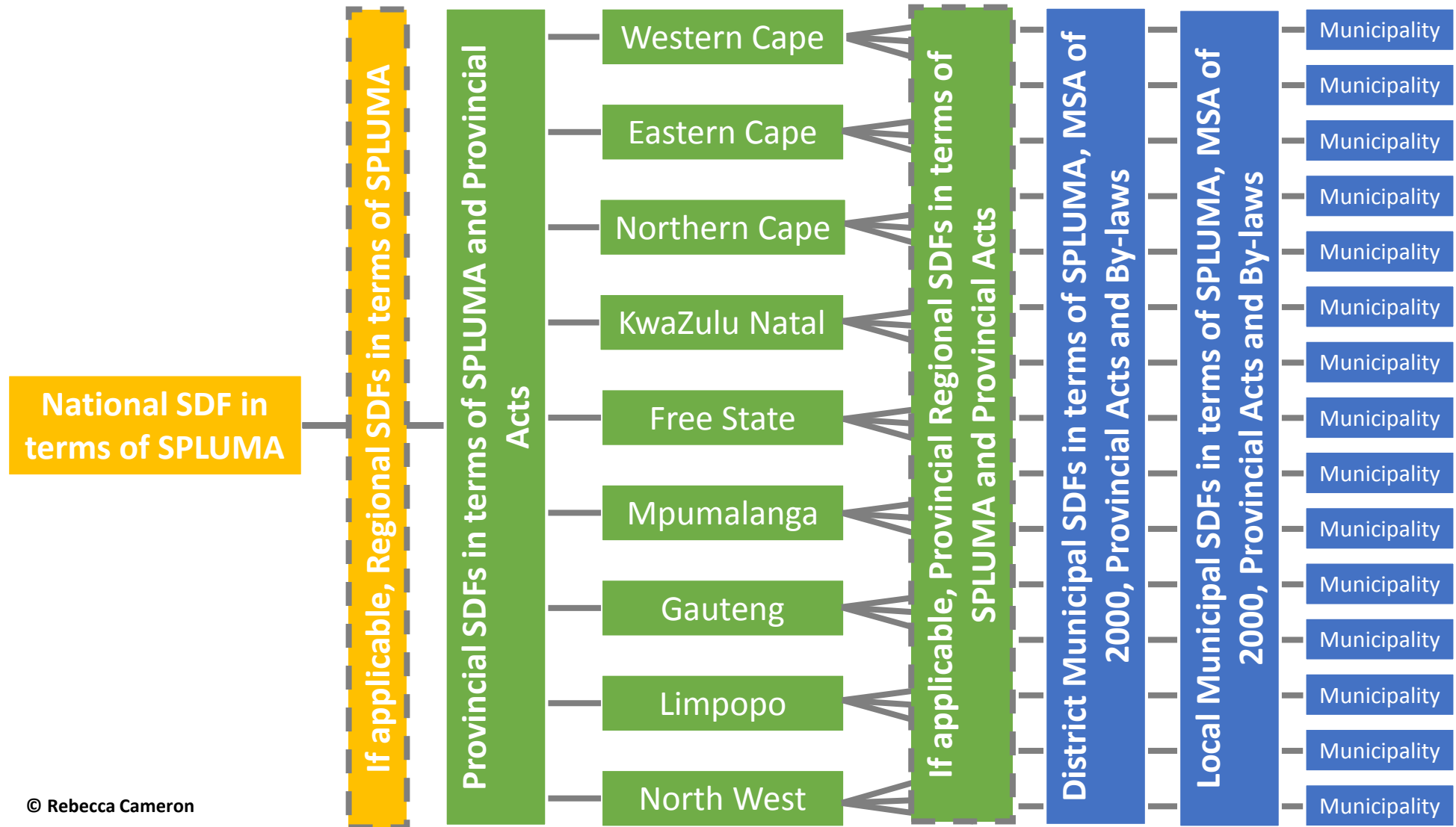
Process (Section 20 – publish MSDF in provincial gazette)

Amendments (none)

Status and Effect of SDF (Section 22 – decision-making must be in line with MSDF)

Conflicts - if you can apply with both/all laws then you must (Sections 10(3) and 22(3)- role of the Premier)

# SDFs and Land Use Schemes



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# SDFs and Land Use Schemes

## Land Use Management and Schemes:

An aspect of municipal planning therefore a local government mandate.

Chapter 5 of SPLUMA: Must give effect to the MSDF and the IDP – therefore a MSDF can take away or give land use rights.

Indicates zoning for whole municipal area including traditional areas and informal settlements.

Section 24: Incremental nature of Land Use Management to become more inclusive, to provide incentives and promote affordable housing.

NB: Therefore need a new approach to zoning apart from Euclidean Zoning.

## Amendments to Scheme?

SPLUMA provides the following (Sections 26(4), (5), 27, 28) with space for provincial legislation to provide greater clarity.

Two amendment types: 1) Proactive review in line with the MSDF; 2) An application leads to a change.

## Consistency of Scheme with MSDF?

Does a change to the scheme require a change to the MSDF? Not in terms of SPLUMA or LUPA, but yes in terms of City of Cape Town by-laws.

Does a change to the MSDF require a change to the scheme? Yes in terms of SPLUMA, but can fall within five-year municipal cycle.

**Increases onus on Municipalities (local or district) to be more proactive in Land Use Schemes rather than the current reactive approach.**

# Land Development Procedures

## Land Development Management (LDM): building and land use or rezoning applications

Municipalities (local or district) must receive all land development applications as the authority of first instance.

Municipalities must appoint a Municipal Planning Tribunal for LDM decision-making (some decision-making authorities can be delegated to an official).

## Municipal Planning Tribunal (MPT)

Appointment and Composition:

- Consists of five people (officials and externals) and relevant technical advisors for five years.
- SPLUMA Regulations: Criteria for Appointment of tribunal members (also need further provincial and municipal laws to govern the formation and processes of a tribunal).
- In the case of a Joint MPT, an agreement must be signed in place of by-laws.
- MPT can delegate authority to sub-committees which then act the same as an official.

Powers:

- Section 42 of SPLUMA: Alteration of specific conditions, change the use, function and form of land, and all municipal powers mentioned in SPLUMA, investigate, can decide its jurisdiction, can give direction to officials.
- SPLUMA Section 43(2): LDM approval lapses after five years.

Applications accepted from land owner (including the state, authorised agent, service provider).

# Land Development Procedures

## Land Development decision-making:

MPT takes a decision in accordance with the majority vote within the prescribed period (National and Provincial laws have different consequences for overstepping time periods).

Western Cape's LUPA adds considerations for decision-making in Section 49 and other minimum requirements such as the need for a professional planner to sign off on certain applications (professionalisation of planning).

Further detail is needed in Municipal By-laws.

## SPLUMA introduces the concept of an intervener

The MPT can grant 'intervener' status to any interested party who applies during either the application or appeals process.

This opens up the public participation process but needs regulation to prevent burdensome time delays and interruptions.

## Appeals

MPT (or relevant delegated authority) decisions to be appealed to Executive Authority within the Municipality (SPLUMA does not state whether the appeals authority can be delegated).

Anyone whose rights are affected may appeal – therefore need to widen the group to which the development application is advertised in the first place to identify interested parties.



# Conclusion

Seven key changes brought in by SPLUMA of 2013

1. The concept of the 'National Interest'
2. The option for a Regional SDF and Provincial Regional SDF
3. Land Use Management vs Land Development Management
4. Land Use Schemes giving effect to MSDFs and IDPs
5. Municipal Planning Tribunals
6. The 'Intervener' Status
7. Municipal Appeals Authority

The radical shifts in the South African planning system promulgated by SPLUMA are a way in which the government hopes that true post-apartheid spatial transformation can begin.

SPLUMA will most likely result in a continuation of the court-driven planning reform experienced in South Africa up until now.

Thank you

Rebecca Cameron  
rebecca@mcaplan.co.za  
www.mcaplan.co.za

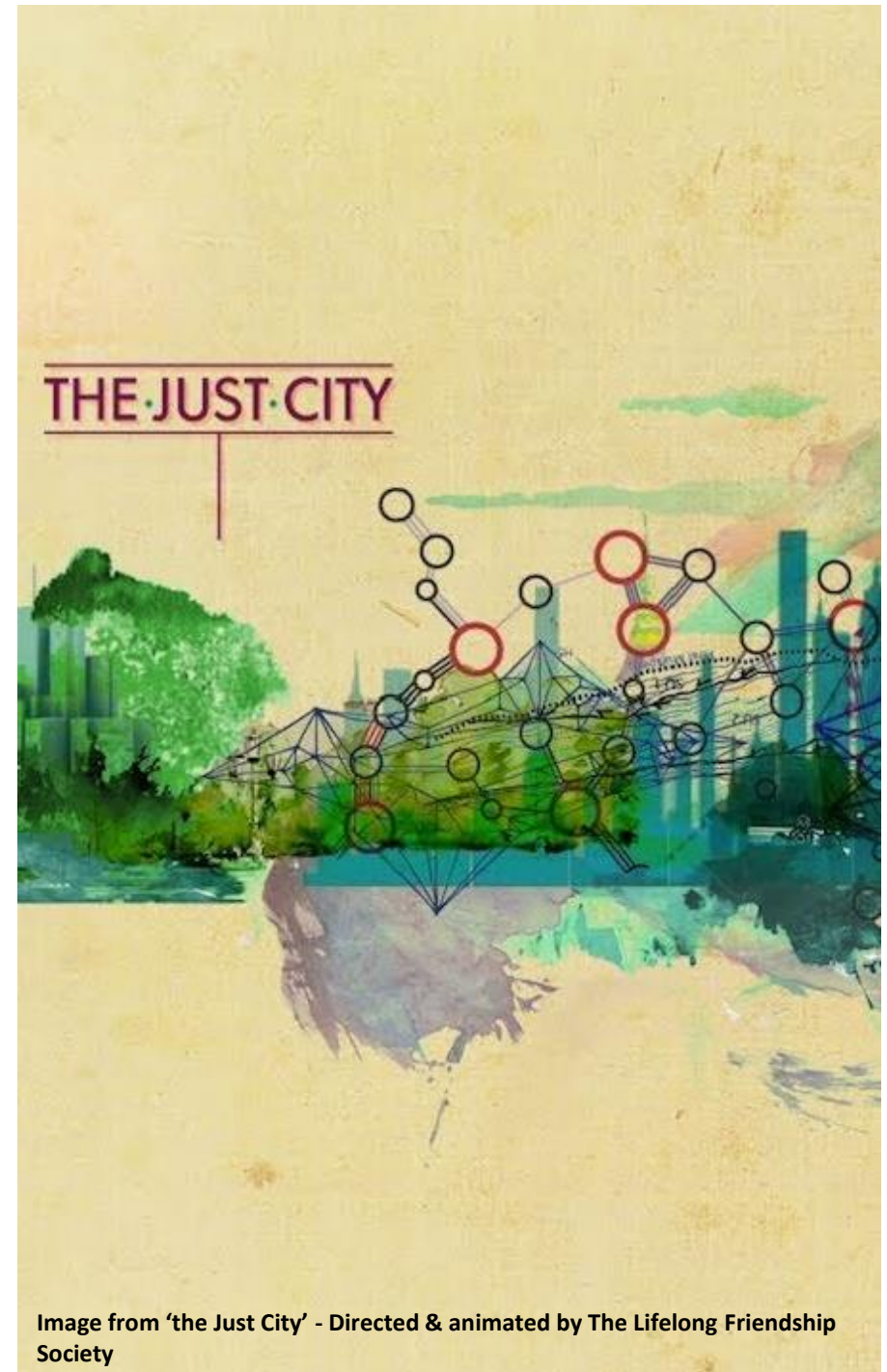


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