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Shaping shores: An exploration of the interplay between law, spatial ontologies and the power to plan at Milnerton, Cape Town

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ABSTRACT

The landscape of coastal planning is being transformed by the emergence of new scales of informal planning both alongside and between established statutory planning frameworks. As informal planning arrangements seldom operate within an institutional vacuum, they are frequently confronted by the path-dependent influence of pre-existing statutory planning institutions. However, there remains a marked dearth of knowledge surrounding the interplay between formal legal planning frameworks and informal planning arrangements at the coast. In response to this lacuna, the current paper endeavours to expand the existing comprehension of the influence of formal legal planning frameworks on informal planning processes at the coast by amalgamating legal geographical insights with the expanding discourse surrounding the function of actors' ontological understandings of space in structuring power relations and discursive interaction within planning processes. These insights are applied to a focussed case study of the operation of an informal planning process, the Milnerton Erosion Forum, at Milnerton, a coastal suburb of Cape Town, South Africa. The empirical findings presented in this article demonstrate the involvement of legal planning frameworks in constituting space and structuring power dynamics among actors at Milnerton, as well as the ways in which spatialised legal power is mobilised to influence socio-spatial decision-making within informal planning processes through actors' ontological understandings and representations of places-to-be-planned. Through visibilisng the dialectical relationship between law, space and the power to plan at Milnerton, this article offers nuanced insights into the complex interplay between legal planning frameworks and informal planning practices at the coast.

1. Introduction

Spatial management paradigms such as Integrated Coastal Zone Management (ICZM) and marine spatial planning (MSP) are increasingly perceived as key institutional approaches for the sustainable governance of coastal spaces (Greenhill et al., 2020). While coastal planning has traditionally operated through top-down statutory planning tools, a growing appreciation of the dynamic and relational materiality of coastal spaces-to-be-planned has catalysed the emergence of new collaborative and adaptive spatial planning vocabularies and approaches (Walsh, 2021). These developments within coastal planning theory and practice have resulted in the emergence of new scales of spatial governance both alongside and between established statutory planning frameworks (Certomà et al., 2020; Walsh, 2015) (see Fig. 3).

As new spatial governance approaches do not develop or operate within an institutional vacuum, they are consistently confronted by the path-dependent influence of pre-existing statutory planning institutions (Purkarthofer, 2016a). However, the influence of formal legal planning arrangements on the implementation and operation of informal spatial governance approaches at the coast remains critically underexplored.

In response to this lacuna, the current paper endeavours to make theoretical contribution to the current comprehension of the complex interplay between formal legal planning frameworks and informal planning processes at the coast, through amalgamating insights from legal geography with the expanding discourse surrounding the function of actors' ontological understandings of space in structuring power relations and discursive interaction within informal planning processes. While these streams of scholarship have developed in isolation from one another and rarely converge in the coastal planning context, their integration offers theoretical insights into the ways in which law frames actors' ontological understandings of coastal places-to-be-planned and how these understandings are connected to the dynamics of power that enable and disable particular socio-spatial outcomes.

These theoretical insights are applied to a focussed case study of the operation of an informal planning process, the Milnerton Erosion Forum (MEF), at Milnerton, a coastal suburb of Cape Town, South Africa. While

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the MEF was established as an informal planning process to govern the challenges instigated by an eroding shoreline at Milnerton, it operated in parallel to an inveterate statutory planning framework. As such, the case study presents a unique opportunity to investigate the ways in which legal planning frameworks constitute space and power, the ways in which these spatio-legal constructions inform actors' ontological understandings of coastal places-to-be-planned, and the mechanisms through which these understandings are leveraged by actors to mobilise legal power in shaping socio-spatial decision-making and outcomes.

The empirical findings of this study illuminate how law constitutes space and structures spatial power dynamics among different actors, and the ways in which spatialised legal power is enhanced, diluted and transformed within informal planning processes through actors' ontological understandings and representations of places-to-be-planned. In visibilising the relationship between law, spatial ontologies and the circuitries of power that shape informal planning dynamics; this article enriches the discourse related to the interplay between formal legal planning frameworks and informal planning practices at the coast.

2. Planning, place-frames and power

While spatial planning has a long and established terrestrial history, it is steadily advancing as a dominant management paradigm for marine and coastal areas, as reflected by the development of numerous statutory ICZM and MSP systems around the world (Flannery et al., 2020). It is generally acknowledged that spatial planning must be responsive to the material qualities of places-to-be-planned (Jay, 2018). The amphibious evolution of spatial planning has thus, required that planners grapple with the fundamental differences between the material qualities of marine, liminal and terrestrial spaces (Fairbanks et al., 2019). A recurring leitmotif within marine and coastal spatial planning scholarship is the distinctiveness of coastal and marine spaces, and the need to tailor planning practices to match the material properties of such spaces (Boucquey et al., 2016; Jay, 2018; Papageorgiou and Kyvelou, 2018).

In order to reflect the material qualities of places-to-be-planned, coastal and marine planning practices and strategies have developed beyond the remit of the traditional sphere of planning, with new scales of informal, collaborative and adaptive planning gaining prominence vis-à-vis statutory planning approaches (Purkarthofer and Granqvist, 2021; Purkarthofer et al., 2022). In line with the shift from top-down government regulation towards new modes of governance, both marine and terrestrial spatial planning are becoming more collaborative and adaptive in their ethos (Flannery et al., 2018; Greenhill, 2018; Smith and Jentoft, 2017). New forms of spatial planning are increasingly portrayed as participatory processes, which ideally engender broad stakeholder participation, knowledge sharing, and collective decision-making pertaining to the spatiotemporal distribution of activities (Nadin et al., 2021; Smith, 2018). Informal spatial governance is also frequently conceptualised as a flexible and adaptive process, comprising of iterative and interlinked steps, operating through multiple and intersecting settings for deliberation (Gissi et al., 2019). Due to the imbrication of governance elements and new informal practices of spatial planning, some scholars have rebranded spatial planning as the 'governance of place' (Schmitt and Wiechmann, 2018).

New informal approaches to spatial planning are seldom established *de novo* and tend to be implemented alongside and within existing institutional management regimes (Mattila and Heinilä, 2022). This is particularly true in terrestrial and coastal areas, which have more established legacies of formal planning. Thus, informal coastal planning practices nest within an encompassing system of legal rules, prescribed by ICZM schemes to govern the organisation, development and use of coastal space (Cheong, 2008; Taussik, 2007). These legal rules include regulatory approaches such as zoning and land use planning, environmental regulation, and property rights (Hartmann and Needham, 2012; Slaev, 2016; Thom, 2004).

Consequently, informal approaches to coastal planning do not emerge within an institutional vacuum, and often require the application of new spatial planning dialects and practices within old, institutionalised regions (Jones and Paasi, 2013). This renders these processes particularly susceptible to the path-dependent influence of pre-existing statutory planning institutions (Purkarthofer, 2016b). While path dependencies may assume a variety of forms, cognitive path dependencies are understood as instrumental in influencing coastal governance and planning practices (Schlüter et al., 2020). Cognitive path dependencies refer to 'concepts, narratives [and] ideologies inherited from previous states of the governance system, either through actors believing in them, or through their embedding in policies, plans, laws, and in informal institutions' (Van Assche et al., 2020, p. 4).

The influence of actors' ontological understandings of space on the ways in which ocean and coastal planning unfolds has been brought to the fore in recent literature on 'spatial frames', 'meta-geographies', 'spatial imaginaries' and 'geo-philosophies' (Acton, 2023; Crawford, 2017; Davoudi et al., 2018; Haughton and Allmendinger, 2015; Peters, 2020; Purkarthofer et al., 2022; Tippett et al., 2022; Walsh, 2018). What this discourse demonstrates is that the way in which actors understand and perceive coastal and marine spaces often underwrites the modes by which governance is performed and management tools are deployed (Boucquey et al., 2016; Peters, 2020; Peters et al., 2018). In other words, actors' ontological understandings of coastal space may constitute a powerful cognitive path dependency that generates a certain stickiness that impedes new ways of doing (Burns, 2022).

Further, scholarship is progressively visibilising the link between actors' understandings of space and the arrangements of power that shape socio-spatial decision-making (Boudreau, 2007; O'Brien, 2019; Vanhellemont, 2016). Informal planning processes provide platforms through which coastal space may be created, communicated, and possibilities for filling it, negotiated (Smith, 2015). Naturally, these processes entail the framing and/or re-framing of imaginations and orderings of coastal places-to-be-planned, however, this does not occur in a power vacuum (Ernste, 2012; Feola et al., 2023).

Actors within these processes often endeavour to generate a consolidated understanding of the spaces-to-be-planned through advancing specific 'place-frames', or 'ways of selecting, organising, interpreting, and making sense of a complex reality to provide guideposts for knowing, analysing, persuading and acting' (Rein and Schön, 1993, p. 146). Once established, a place-frame constitutes a 'power complex of meanings and associations that has authoritative power' to order discursive interaction and enable or disable certain socio-spatial outcomes (Crawford, 2017, p. 19).

These learnings position actors' understandings of space as pivotal to the ways through which power is structured, mobilised and transformed within spatial governance processes. While informal planning practices have been lauded for their potential to enhance the adaptive and democratic qualities of coastal planning, research evidences that their practical application has been marred by an underappreciation of asymmetrical power relations among actors, often blunting their transformative capacity (Flannery et al., 2018, 2019). In light of these critiques, casting an analytical spotlight on the way in which actors' ontological perceptions of space function as containers of knowledge and power presents a critical entry point to understanding the patterns of domination and vulnerability that remain underexplored aspects of planning at the coast.

Despite the growing recognition that the path-dependent influence of pre-existing planning configurations may present inertial resistance to the efficacy of new informal planning practices (Cavaco et al., 2023), the current scholarly comprehension of the involvement of formal legal planning frameworks in shaping actors' understandings of coastal space, and the ways in which these understandings are deployed in the mobilisation of power within informal planning processes, remains inchoate.

3. Law's constitution of place and power

The previous section detailed the susceptibility of informal planning processes to the path-dependent influence of statutory planning frameworks, and expatiated on the notion of cognitive path dependencies through a focus on the involvement of actors' ontological understandings of places-to-be-planned in the mobilisation of the structures of power and discursive interaction that pervade informal planning processes. This section draws on legal geographical insights to develop an understanding of the involvement of legal planning frameworks in the constitution of coastal space and the ordering of power relationships within it.

In recent years, there has been greater engagement with the legal aspects of spatial planning in socio-legal thought. Not only have scholars accentuated the legal foundation of spatial planning, they have also highlighted the value of applying socio-legal lenses in understanding the emplaced effects of law and legal spatial planning arrangements (Harris, 2023; Lombardo and Wideman, 2018; Wideman and Lombardo, 2019). Notably, scholars have argued convincingly that legal geography, a subspecies of socio-legal research that investigates the ways in which law and space are co-constituted, may provide rich insights into the disguised narratives, partialities and naturalised ways of being and doing that are entrenched through the legal components of spatial planning frameworks (Ntona and Schröder, 2020).

In analysing the co-constitutive relationship between law and places-to-be-planned, legal geographers have problematised the tension that exists between law's desire to secure stable and predictable conditions for societal interactions, on the one hand, and the complexity and fluidity of the material world, on the other (Bartel and Graham, 2022). As a paradigm, law is underpinned by reason and logic, and thus valourises abstraction as a means to ensure certainty and predictability (Bartel et al., 2013). In order to generate certainty and predictability within complex and dynamic socio-ecological systems, law often attempts to disentangle itself from the contexts and entanglements that may undermine its supposed objectivity (Blomley, 2008). This normative process has been referred to as 'bracketing', or 'the attempt to stabilise and fix a boundary within which interactions take place more or less independently of their surrounding context' (Blomley, 2014a, p. 135). Bracketing aims to insulate law from its socio-material substrate, allowing law to abstract a set of legally consequential relations from a broader matrix of contextual entanglements (Blomley, 2014a). Legal geographical insights suggest that bracketing is an apodictic means through which legal planning unfolds, as it enables law to mandate how space is and ought to be (Layard, 2016, 2021).

As coastal spaces are notoriously fluid, transient and complex; legal planning frameworks rely heavily on processes of bracketing to instill certain and predictable conditions for societal interactions within coastal space. Bracketing occurs through two interrelated acts – inscription, or the process of delimiting and naming; and reading, or the process of determining meaning (Blomley, 2008).

Legal planning frameworks are frequently involved in a process of inscription, through which coastal space, features and process are delimited and marked, in order to render them legible (Blomley, 2015). This necessitates that material entities and phenomena enter law through a process of simplification, whereby they are reduced and assigned to bounded territorial categories, enacted through the drawing of legal boundaries (Blomley, 2008). The very use of the term 'coastal zone' in everyday planning parlance is indicative of the reduction and containment of a 'lively' (Jay, 2018) and relational space to a bounded and delimited legal construction.

Zoning, for example, is often the principal management intervention enlisted to implement coastal spatial management plans (Ehler and Douvere, 2009; Kenchington and Day, 2011). Zoning requires the carving out of territories, or units of bounded space, that can be measured and quantified in order to create specific intervention mechanisms for spatial governance (Johnsen and Hersoug, 2014). Consequently, coastal space, as articulated in legal planning frameworks, is not a veracious reflection of the material reality of such space, but rather a legal translation of ungovernable complexity into a defined governable object that may serve as the basis for governance interventions (Johnsen and Hersoug, 2014). Through processes of inscription, legal planning frameworks reduce the complexity and fluidity of the natural world to a 'giant legal abstraction', which constitutes a metaphorical chessboard upon which legal planning interventions unfold (Steinberg, 1995, p. 10).

Once coastal space has been subject to legal inscription, law organises and disciplines human behaviour in orderly and predictable ways. This occurs through a process of reading, whereby law ascribes meaning to legally-constructed space through legal norms and regulations that define the rights, responsibilities and restrictions of stakeholders, thereby shaping the distribution of resources, authority and social relations within coastal places-to-be-planned (Blomley, 2008; Ntona and Schröder, 2020). Viewed through a spatial lens, law is more than a neutral regulatory tool, but actively contributes to the spatial configuration of and geometries of power within coastal places-to-be-planned.

The function of law in shaping spatialised power dynamics is exemplified by planning law, which endeavours to arrange social relations within specific zones/territories, through foregrounding some and severing others (Lombardo and Wideman, 2018). Often, this requires that factional interests within these territories be abolished through a 'violent effort to extricate the agents concerned from [a] network of interactions and push them onto a clearly demarcated "stage" which has been specially prepared and fitted out' (Callon, 1998, p. 253). This is, perhaps, most evident in the case of land use planning law, which entails a subtle and complex calculation that governs what is, and what is not, to be included in a particular spatial setting (Blomley, 2017; Wideman and Lombardo, 2019). In South Africa, land use legislation is applied within the various sub-zones created by coastal legislation to determine the permissible use rights that are compatible with coastal management objectives, as well as the non-conforming uses that do not comply with the zoning scheme for the relevant sub-zone.

The territorial formalisation of property rights constitutes a further mechanism through which law privileges certain actors and interests over others within legally-constructed spaces, shaping the relations of power and authority among actors (Blomley, 2011, 2016, 2019). Legal frameworks for coastal management often confer upon certain actors exclusive property rights within defined territorial limits, abnegating the legitimate claims and interest that non-right holders may have in relation to that same territory (Meinzen-Dick and Mwangi, 2009). Property law may thus, work through and in tandem with territory to enact coastal space into bounded territorial parcels, from which non-right holders are to be excluded, as opposed to tenures contingent on the relational socio-material networks of place (Blomley, 2007). This is best exemplified by the legal enactment of a strict dichotomy between public and private land at the coast. By confining public and private to distinct and antagonistic places, legal planning frameworks dictate that the public and private domains are separable and distinct, and should remain as such (Blomley, 2004, 2005).

An explicit focus on the processes of bracketing that underscore legal planning visibilises law's involvement in the construction, ordering and signification of coastal space, as well as in the creation of spatialised legal and social hierarchies (Delaney, 2016). However, law is simply formless formalism unless connected to the real world (Blomley, 2014b). Indeed, at its core, law is about representation, or the joining of legal dictates and discourses to the material world (Bennett and Layard, 2015). Thus, law's conceptual definition and signification of coastal space is often accompanied with forms of physical enclosure. While physical enclosure may manifest through physical markers, like fences and signs, it may also occur through forms of spatio-legal representation, like mapping, geographic information systems and data portals (Boucquey et al., 2019). These representational devices facilitate the materialisation of legal spatial arrangements, enabling coastal actors to

perceive and cognise these otherwise abstract constructs.

There is a growing body of scholarship detailing the reality-shaping capabilities of maps within spatial planning processes (Klain and Chan, 2012; Shucksmith and Kelly, 2014; Smith and Brennan, 2012). Critical cartography scholarship has demonstrated that maps and visual aids constitute technologies of power, which are deployed within place-framing processes to funnel consensus towards common objectifications of coastal space (Smith, 2015). These insights enable a deeper comprehension of the ways in which the power asymmetries, created through legal bracketing, permeate informal spatial governance processes, as actors wield legal concepts and discourses, in conjunction with maps and other visual aids to frame coastal space and validate their positions within it (Ntona and Schröder, 2020). Appreciating the ways through which the authoritative power of law to structure place and power is mobilised via representations and understandings of coastal places-to-be-planned offers a nuanced perspective on the interplay between statutory planning frameworks and informal planning processes at the coast.

4. Methods

This paper endeavours to explore the ways in which formal legal planning arrangements inform actors' ontological understandings of coastal space, as a place-to-be-planned, and how these understandings, in turn, implicate the operationalisation of informal spatial planning processes at the coast. This investigation is grounded in and draws insights from a multi-year case study, conducted as part of the author's doctoral dissertation (Rebelo, 2023).

The case study comprised a bricolage of research methods used to generate suitable data. A doctrinal research method was employed to analyse and interpret the normative content of the legal planning framework relevant to the challenges experienced at Milnerton. In addition, various qualitative research methods were employed to collect data. This was combined with complimentary data collection methods such as, participant observation, semi-structured interviews, informal conversations, and documentary analysis of relevant reports and publications.

The primary data employed in this paper derives from the researcher's participation in and observation of an informal spatial governance process, the MEF. The MEF operated for a period of just under a year and comprised of 6 separate meetings, held between the October 25, 2018 and the August 13, 2019. The researcher attended all MEF sittings and recorded minutes. An additional seven semi-structured interviews were conducted with participants of the MEF between the months of September to November of 2019. The analysis of qualitative data was conducted through a process of open coding. Key thematic areas were appropriately marked with 'codes', which were subsequently arranged into various sub-categories and refined after various rounds of re-analysis. Codes were continually refined and related back to the bodies of literature canvassed in sections 2 and 3 in order to identify links between the between data and theory.

5. Planning between the brackets: the establishment of the Milnerton Erosion Forum

Milnerton is a suburb on the shores of the Atlantic Ocean in Table Bay, Cape Town, South Africa (Fig. 1). The Milnerton coastline is the locus of heavy development pressure from both public and private development (Backeberg et al., 2008). As well as being an intensively developed area, Milnerton Beach is a popular site for public beachgoers and its value as a social space has been extensively documented in various studies (Sowman et al., 2016, 2022) (see Fig. 2).

Milnerton Beach is one of Cape Town's most significant 'hotspots' in relation to coastal erosion risks (CCT: Coastal Management Branch, 2020, p. 5). At Milnerton, social conflict has emerged among coastal users surrounding rights, restrictions and responsibilities as physical alterations of the coastline, incited by coastal erosion, interact with and transform legal constructions of coastal space. This conflict is most pronounced among two prominent stakeholders - the beach-going public and private property owners - as both sets of stakeholders vie for diminishing coastal space.

South Africa's Integrated Coastal Management Act 24 of 2008 (ICMA) is the primary legislative tool for the governance of coastal space and can thus, be conceptualised as a legislative spatial planning tool. In defining South Africa's 'coastal zone', the ICMA employs a process of inscription, through which coastal space, features and process are delimited and marked in order to render them legible. The ICMA establishes various spatial territories, which interlock to form South Africa's coastal zone.[1] These spaces form a crucial part of the coastal planning informational structure, and serve as the fundament for the spatial delimitation of legally-recognised rights within coastal space.

The territorial component over which the public enjoy rights of access and use is known as coastal public property (CPP). While the ICMA declares that CPP is owned by all the citizens of the Republic, the State is to act as the trustee of CPP and must manage it in the interests of all South Africans (ICMA, 2008, s. 11 (1)). Accordingly, CPP can be understood as a bracketed spatial category in that, through the legislative formalisation of public rights of access and use in relation to CPP, the ICMA ascribes CPP and all the natural features it encompasses with a distinctly public character or particularism.

The vast majority of terrestrial CPP in South Africa encompasses the seashore, or the geographic area between the low-water mark (LWM) and the high-water mark (HWM). The HWM comprises a natural fractal line boundary that is ambulatory, in that it moves both landward and seaward in relation to changing coastal conditions (Mackie, 1993, Mackie, 2015). On account of the ambulatory nature of the HWM, CPP, as it comprises the seashore, is too a dynamic spatial component.

At Milnerton, coastal erosion is driving the 'unidirectional' landward movement of the HWM (Peloso and Caldwell, 2011, p. 88). This is problematic as the Milnerton coastline is extensively developed, with numerous privately-owned land units bounding the HWM. Much like CPP, private land at Milnerton is also a bracketed space. This is because the property rights of private landowners are traditionally understood as applying exclusively and uniformly within rationally-defined cadastral boundaries (Babie, 2013). The littoral private properties at Milnerton have been registered with fixed straight line seaward boundaries (Whittal, 2016). As a result, they form a fixed boundary, which impedes the landward movement of the HWM and CPP.

Consequently, coastal erosion is instigating the collision of two bracketed legal spaces at Milnerton, that of CPP and private land. In order to navigate this spatial conflict, the ICMA stipulates that when the HWM shifts over the straight line property boundary of a privately-owned land unit, due to coastal erosion, private ownership over the portion of the land unit below the HWM is extinguished and the affected portion is converted to CPP (ICMA, 2008, s. 14 (5)). Private landowners are legally entitled to defend their properties from erosion, provided that the measures they undertake are located on their own land and receive environmental authorisation (ICMA, 2008, s. 15). However, many landowners along the Milnerton coastline are not abreast of, or concerned about, the law regarding coastal erosion and the influence of movements of the HWM on private landownership. As a result, these property owners are unaware that the portions of their property, situated below the HWM, have automatically been converted to CPP in terms of the ICMA.

Notwithstanding this ignorance, in response to intensifying erosion, private property owners have adopted a variety of measures to defend their properties from further land losses. Notably, the largest private residential complex at Milnerton, Woodbridge Island, erected a fence to

[1] These include Coastal Public Property, the Coastal protection Zone, Coastal Access Land etc.



Fig. 1. Map of the case study site and indication of key features.

restrict public access to and secure the ecological integrity of its frontal dune system (Sowman et al., 2022). While the Woodbridge Island Body Corporate (WIBC) perceives the fence as a necessary intervention to maintain the dunes, which in turn, protect the beach from erosion; the fence has had a negative impact on the public's rights to access and utilise CPP, as beach users are unable to traverse the beach freely at high tide (Sowman et al., 2016).

Numerous complaints were lodged by public beachgoers about the health and safety hazards posed by the fence, as well as the impediment it poses to beach access and use. While the State is of the opinion that the fence has been illegally erected on CPP, all attempts to enforce compliance with the provisions of the ICMA have been occluded on account of the inability of the State to determine the legal HWM. The most recent attempt to determine the HWM at Milnerton in 2015 was rejected by the Surveyor General of the Western Cape as the correct legal procedure was not adhered to (J. Whittal, personal communication, May 3, 2019). While there is patent visual evidence that the HWM has shifted landward of the Woodbridge Island fence, the absence of legally-determined HWM at Milnerton, as the boundary between public and private land, has locked the State and the WIBC into a legal stalemate, for which litigation appears the only foreseeable option to break.

In response to the inability of actors to rely on the legal planning framework to resolve the challenges instigated by material changes in the Milnerton coastline, the City of Cape Town (CCT) Metropolitan Municipality established a multi-stakeholder informal spatial governance process to foster innovative and adaptive socio-spatial decision-making at Milnerton. The MEF commenced on October 25, 2018 and was attended by various stakeholders from the Milnerton community, including representatives of the body corporates of the residential properties at the Milnerton Beach node, the Milnerton Central Residents Association, ward councillors, and the beach-going public. The Forum was chaired by officials from the CCT.

Although the MEF was established with the express intention to 'develop an alternative approach to resolve the challenges experienced at Milnerton' (CCT: Coastal Management Branch, 2018), it operated alongside an established statutory planning framework. As an archetypal exemplar of an informal planning process, the chronicle of the MEF provides valuable insights into the way in which legal power is mobilised as a mechanism to shape discursive interaction and influence decision-making through the advancement of spatio-legal place-frames. The empirical findings of the case study thus, offer a nuanced perspective on the complex interplay between formal legal planning frameworks, power relations and informal planning processes at the coast.



Fig. 2. Woodbridge Island fence. Source: Jason Smith.



Fig. 3. Remnants of the Woodbridge Island fence after a storm in 2023. Source: Matt Activism.

6. Findings

6.1. The consolidation of a spatio-legal place-frame for the MEF

Informal planning processes, like the MEF, are often implemented to overcome the constraints posed by formal legal planning frameworks by encouraging the collaborative and adaptive spatio-temporal distribution of human activities within coastal space (Allmendinger and Haughton, 2010; Mishra, 2019). Indeed, the MEF emerged in the wake of a prevailing sentiment among all actors at Milnerton that the legal planning framework was ill-suited to address the challenges experienced at Milnerton.

Despite this, while CCT representatives indicated that they did 'not want to be prescriptive in the Forum discussions', they equally maintained that the CCT has to 'operate in the confines of the law when responding to coastal erosion' (MEF, October 25, 2018). As many of the participants were not familiar with the legislative framework for coastal erosion, CCT representatives provided a brief framing presentation at the inaugural sitting of the MEF, which included a synopsis of the key legislative provisions in the ICMA relating to coastal erosion and detailed the various legally-constructed spatial components that comprise the coastal zone.

Participants soon became aware that the legal language of coastal planning is articulated through the lexis of legal spaces. Given the centrality of legally-constituted spaces in determining the legal rights, responsibilities and restrictions of coastal stakeholders, participants were eager to understand their positions in relation to legal territorial constructs. To assist participants in visualising these abstract legal territories, CCT representatives offered to generate a spatio-legal map of the Milnerton coastline.

Instead of presenting a neutral depiction of coastal space, the map deliberately included and accentuated certain features, while obscuring or omitting others (Cosgrove, 2008; Kitchin and Dodge, 2007). Actors were presented with a spatio-legal representation of coastal space at Milnerton, comprising of the various spatial components created by the ICMA, such as CPP and the coastal protection zone (CPZ), as well as the cadastral boundaries of the various property parcels along the Milnerton coastline. While natural features such as the sea, the seashore and dune systems were represented on the map, they were reduced to subcutaneous incidentals, occupying a bleared and stationary existence below a more conspicuous grid of legally-constructed territories. While the HWM was depicted on the map, when questioned about its position, CCT representatives conceded that its position was reflective of the position of the HWM, as determined by the most recent HWM survey, which had not been formally accepted by the Surveyor General.

Informed by the mapped representation of coastal space, discussions surrounding key challenges at the MEF were conducted using the same spatio-legal vocabulary that is entrenched within planning legislation. Spatio-legal terminology such as 'public open space', 'CPP', 'erven', 'cadastral layout', 'HWM', 'CPZ', 'property boundary' and 'neighboring property' were frequently employed by the participants to describe coastal space and frame the erosion challenges occurring within it. As such, the spatio-legal map of the Milnerton coastline advanced certain propositions about coastal space, which provided a form of semi-objective evidence to support the acceptance and consolidation of a hegemonic spatio-legal place-frame.

6.2. Participants' mobilisation of a spatio-legal place-frame to evade responsibility for dune management

The spatio-legal place-frame adopted at the MEF was frequently mobilised as an apparatus of power by actors to advance their interests in relation to those of other actors. This was most acutely observed in the debate about which stakeholders were responsible for dune management at Milnerton. The MEF was established with the express intention to promote collective responsibility for erosion management at Milnerton (CCT: Coastal Management Branch, 2018). However, there was a palpable sentiment among private sector participants that the State has abnegated its responsibility for erosion management, and that they have been saddled with a 'herculean' task of maintaining the dune system with 'little technical and financial support from the CCT' (Sowman et al., 2022, p. 50). While the private sector participants felt that the State should assume the primary responsibility for dune management at Milnerton, CCT representatives maintained that 'dunes naturally erode and accrete and that they would not interfere with natural dune processes' in order to remedy a 'private loss' (MEF, November 29, 2018).

By referencing the spatio-legal map presented at the first Forum meeting, private sector participants alleged that the dune system was situated on a portion of public open space (POS), owned by the CCT. One participant claimed that 'the CCT has an implied duty to maintain the

dune cordon to protect [both private property and the beach] because it's *their land*' (MEF, March 18, 2019). Another participant maintained that 'dunes are vital to the preservation of the beach and the property behind them' and that the dune system 'is being compromised by anthropomorphic damage' (MEF, November 29, 2018). The same participant voiced concerns about homeless people squatting on the dunes and asserted that the 'land is owned by the CCT and consequently, the CCT should deal with this issue as this occupation is damaging the dunes and contributing to increased levels of erosion' (MEF, November 29, 2018).

By alleging that the dune system was situated on public land, private landowners drew on the spatio-legal place-frame to mobilise a bracketed understanding of coastal space that obfuscated the physical materiality of the dune system, subsuming it into a designated legal category with pre-assigned legal meaning. Through foregrounding the territory upon which the dune system was situated and obscuring the 'thingness' (Arnold, 2002, p. 83) of the dune system, itself, private landowners sought to reframe the question of who is responsible for the management of the dune system to who is responsible for the management of the territory upon which the dune system is situated. In this way, private landowners tactically deployed the spatio-legal place-frame as a heuristic tool to induce an understanding of the dune system as a bracketed legal entity so as to deliberately conceal their interests in the dune system, and thus, their responsibility to manage it.

In response, CCT representatives alleged that the coastline has eroded so dramatically that the ribbon of POS, owned by the CCT, had been converted into CCP in terms of the ICMA. A CCT official indicated that 'there is very little CCT land left [at Milnerton] as the coast has eroded so dynamically' and that 'the CCT cannot conduct activities on CPP', as CPP falls under the management jurisdiction of national government (MEF, May 21, 2019). However, the representative added that they would 're-examine the cadastral map to determine if there is any CCT land remaining in that area' (MEF, May 21, 2019). Just as private landowners had attempted to bracket the dune system in terms of legal spatial categorisations, CCT representatives endeavoured to re-categorise the dune system as part of CPP in order to evade responsibility for dune management and transfer responsibility to national government.

Both parties thus mobilised spatio-legal place-frames as technologies of power to obscure the relational nature of coastal space, resources and features in the pursuance of self-interest. However, statements such as 'as the State land gets washed away, [erosion] now threatens private land' and 'the State has taken no action to protect its own land, which now has adverse effects on the adjacent land of private property owners in that area', indicate that actors may hold a more relational understanding of coastal space, whereby multiple interests converge within particular areas and resources (MEF, March 18, 2019). Indeed, these understandings acknowledge that the causes and effects of coastal erosion traverse artificially imposed divisions, without regard for legal boundaries (Thom, 2004). These slippages hint at other, more authentic, understandings of coastal space and the associational relations within it at Milnerton; disclosing the disingenuity of actors' attempts to conceal the material and foreground the legal.

6.3. The Woodbridge Island fence: same approach, same result

The impact of the Woodbridge Island fence on public access to and use of CPP was flagged at the first meeting as a key issue to be resolved at the MEF, as various participants raised concerns about the impact of the fence on the public's ability to safely access and use the beach. However, a representative of the WIBC claimed that the fence performs a fundamental ecological function in maintaining the dunes and thus, 'has had a positive effect and will continue to provide an ongoing positive effect in this zone' (MEF, November 29, 2018). To substantiate these claims, the representative indicated that Woodbridge Island had not lost a 'centimetre' of their dunes (MEF, November 29, 2018). This contrasts with the position of other body corporates in the area, which have suffered significant erosion to their frontal dunes. The WIBC believe that the robust state of the dune system is directly contingent on the existence of the fence, which prevents beach-goers from accessing and damaging the dune system. In light of these assertions, participants sought to negotiate an outcome that ensured the protection of the dunes, while also mitigating the hazard posed to the public by the fence. A CCT representative proposed that 'the fence should be realigned to the toe of the dune as to still preserve the dunes, but also allow the public more space to traverse the beach' (MEF, November 29, 2018).

However, this proposal was met with ardent resistance from a representative of the WIBC, who alleged that 'the property line is 30 m [seaward] of the fence' (MEF, May 21, 2019). Drawing on the spatio-legal map as evidence, representatives of the WIBC asserted that the fence was located within the confines of private property. This assertion was challenged by CCT representatives, who claimed that the cadastral map did not provide an accurate reflection of Woodbridge Island's property boundary as 'any property that falls seaward of the HWM is CPP, meaning it is no longer under the ownership of the private property owner, it now belongs to the State' (MEF, May 21, 2019). Ultimately, the negotiations surrounding the fence devolved into a dispute about whether the fence was positioned on private or public land. However, this approach was observed to be problematical at Milnerton, where challenges associated with the legal determination of the HWM have rendered the boundary between public and private land indeterminate.

The indeterminacy of the legal HWM at Milnerton suggests that the fence exists within a space that is neither public nor private, but rather intermingles both. As one participant indicated, 'currently the HWM is below the fence, but at one stage after a storm, the HWM was above it' (MEF, March 18, 2019). Indeed, the fence had seemingly escaped the abstract brackets of law and could not be neatly confined to a distinct public or private spatio-legal categorisation.

Reluctantly, a representative of the CCT articulated that the 'first step should be the determination of the HWM' and that 'once the HWM has been determined, decisions will have to be made regarding infrastructure on the beach at Milnerton' (MEF, February 12, 2019). This approach invokes a strong sense of déjà vu, as it replicated previous legalistic approaches to address the fence, the failure of which ultimately catalysed the establishment of the MEF.

7. Discussion

7.1. The role of place-frames in animating legal power within informal planning processes

Although informal spatial governance processes may seek to evenly distribute power among all participants, the power sharing potential of these processes is contingent on powerful stakeholders divesting themselves of existing power resources to enable win-win outcomes (Flannery et al., 2018). However, actors are rarely so magnanimous in practice and are likely to leverage available power resources in the promotion of self-interest (Jentoft, 2017). Law is much more than an abstract discourse and when spatialised, conveys and reinforces power through intricate and striated spatial practices, which code, enable, exclude and locate certain actors and relations at the coast (Blomley, 2003). On account of its explicit State backing, legal power exerts particularly potent coercive effects over actors, presenting a puissant mechanism through which actors may realise their own interests in the face of resistance from other actors.

The Milnerton case study illustrates the role of place-framing processes in materialising the asymmetrical relations of power created by formal legal planning frameworks within informal planning processes. The geometries of power established through legal bracketing are structured in relation to abstract legal territories such as CPP and privately-owned coastal land units. Law's territorial constructions are thus, 'part of the material form that power is given, without which

power cannot be realised' (Delaney, 2001, p. xviii). These territories are abstract conceptual constructs and lack independent material existence (Blomley, 2022). Certainly, when our primordial ancestors crawled from the sea, they encountered sand, salt and all those natural things innate to the coast. Unlike the coast's natural belongings, legal spaces have to be conjured into existence if actors are to leverage the power rooted in these constructions. This summoning occurs through processes of place-framing, where representational devices, such as spatio-legal maps, are strategically deployed as technologies of power to abolish factional coastal imaginaries and mobilise a hegemonic spatio-legal place-frame.

Through the use of maps and other forms of spatio-legal representation within processes of place-framing, actors are conditioned to see coastal space as assembled through legal planning frameworks. This beguiles actors into believing that legally-constructed spaces exist and moreover, that these spaces have always existed as part of the natural fabric of coastal space. In this way, the consolidation of a hegemonic spatio-legal place-frame among actors at the MEF entailed a powerful temporal framing of coastal space, constituting a 'crucial time barrier beyond which all memory [becomes] amnesia' (Shamir, 2017, p. 243).

Scholarship has recognised the coercive power of place-frames within decision-making processes (Martin, 2003; Pierce et al., 2011). Once a dominant place-frame has been established, it functions as a stabilised configuration of meanings and associations that has authoritative power to order space in particular ways (Crawford, 2017). At Milnerton, the spatio-legal place-frame adopted by actors not only enabled the embodiment of legally-constructed territories within coastal space, but also the legal meaning ascribed to these spaces through calculated processes of bracketing.

The inseparability of legal space and legal meaning accentuates the critical role of place-framing in legitimising legal power and repackaging it as the power of place, itself. Through the consolidation of a dominant spatio-legal place-frame, actors at the MEF were conditioned to think of coastal space as prescribing its own pre-existing rules and meaning, and not the rules and meaning generated for it by law. This makes the geometries of power created through bracketing appear inevitable, pre-ordained, and immutable (Blomley, 2015). Consequently, while the power of law is contingent on the visibility of its spaces, it is the conspicuous visibility of these spaces, made possible through place-framing, that, ironically, renders the ideological power of law invisible (Braverman, 2011).

This has the effect of both legitimising and camouflaging the way in which actors leverage legal power to promote self-interest within participatory planning processes. When actors understand legal territories as inherent features of coastal space, the legal power derived from one's positionality in relation to legal territory can be exploited more insidiously as such power is not easily recognised as power granted through law, but rather as power ordained by place, itself. Often, this grants the exercise of legal power a more benign appearance, rendering it more palatable within informal planning processes, like the MEF, which are often established to overcome the constraints of legal planning frameworks.

Through alleging adherence to the pre-existing rules of place, actors may conceal self-interest by presenting themselves as confined to entrenched positions and roles, lacking any self-determination and autonomy to make compromises towards the realisation of mutually-agreeable solutions. However, this discounts the reality that actors at the MEF had strategically ascribed self-serving rules to place through the mobilisation of a spatio-legal place frame. This effectively obscures the power relations at play by 'displacing attention from the controller and the controlled' to the impersonal legal territories implicit to the coast (Blomley, 2014a, p. 232). This is best reflected by the assertions of the CCT representative, who maintained that actors would need to 're-examine the cadastral map' in order to discern their capacity to manage the dune system at Milnerton. In this way, the spatio-legal map, and the legal territories depicted thereon, are framed as the agents doing the planning, as opposed to the participants themselves.

7.2. The role of legal power in sustaining hegemonic spatio-legal place-frames

The Milnerton case study demonstrates the involvement of spatio-legal place-frames in installing and legitimising legal power within informal spatial governance processes. Due to its explicit State backing, legal power has a potent coercive effect over actors and was thus, routinely leveraged by actors at the MEF in the pursuance of self-interest.

However, the findings of the case study indicate that legal power can only be leveraged through specific ways of knowing and understanding coastal space. This is because actors derive legal power from their position in relation to legally-constructed spaces. Accordingly, the ability of actors to leverage the authoritative power of law within decision-making processes is inextricably contingent on the perceived veracity of law's territorial constructs. Thus, every exercise of legal power by actors must be accompanied by a concomitant affirmation of the legally-mandated spatial order from which legal power derives. In exercising legal power, actors thus underwrite the ossification of a hegemonic spatio-legal place-frame, and impede the emergence of alternative ways of knowing coastal space.

This is not to say that actors did not experience coastal space in more varied and heterogeneous ways than those mandated by the established place-frame, as depicted on the spatio-legal map. On the contrary, actors at Milnerton were observed to understand coastal space in heterodox and hybridised ways that complicated legally-mandated geographies. Notably, while distinct and antagonistic public and private spatial categories form part of law's spatial ordering, the inability of actors to determine the HWM at Milnerton resulted in the emergence of a liminal space of undulating interconnection between the public and private domains.

This insubordinate space is an unbracketed one, in which legal power speaks less vociferously. Its acceptance and recognition within the informal spatial governance process at Milnerton presented possibilities to jettison established legal power geometries and encourage enhanced innovation and inclusion in decision-making with regard to the Woodbridge Island fence. However, it is precisely because this space is severed from the circuitries of legal power, enclosed in dominant spatio-legal place-frames, that actors struggled to connect it to the structures of legal power that hold authoritative currency within decision-making processes. Actors are thus, compelled to relinquish their authentic experiences of coastal space to legally-mandated particularisms, if they wish to wield legal power both in pursuance and defence of their interests. As a result, once conjured into existence, the spatio-legal place-frame at the MEF became a self-sustaining construct, insulating itself from counter-hegemonic subversion by rendering the exercise of legal power contingent on only specific ways of knowing and understanding coastal space.

7.3. Abstract legal power and the omission of place in decision-making

Informal approaches to planning are often extolled for their potential to enable more adaptive socio-spatial relations through an explicit acknowledgement of the role of place-agency in directing geographically responsive decision-making (Nadin et al., 2021; Stalmokaitė et al., 2023). However, the acceptance of a hegemonic spatio-legal place--frame among actors at the MEF was found to enable a dominant circuitry of legal power that is wholly detached and independent of materiality. As previously explained, the legal power geometries of place are created through processes of bracketing, whereby legal planning frameworks thrust meaning onto coastal space. In this way, coastal space is treated as an inert or neutral backdrop upon which legal meaning is imposed, devoid of its own agentic power (Blomley, 2014a).

Consequently, actors rarely understand natural coastal landscapes,

process and features as power constructs in themselves. Or if they do, the power of place is perceived to exert lesser influence over decision-making, particularly when pitted against legal power. On account of this, the material conditions of place were rarely assimilated into decision-making surrounding the appropriate socio-spatial uses of such places at the MEF. Naturally, this omission culminates in decisions and outcomes that are discordant with actors' authentic experiences of coastal places-to-be-planned.

Indeed, all actors at the MEF were observed to perceive the space between public and private not as a fixed point of separation, but rather as a space of undulating interconnection. In light of these understandings, the fence manifests as a permanent physical partition, erected solecisticly in a space of flowing connection. However, the deterministic power of place was overlooked in decision-making regarding the fence, as actors sought to leverage abstract legal power to influence negotiations surrounding the fence's future. Similarly, insofar as actors sought to determine responsibility for dune management, engagements were not framed in consideration of the physical characteristics of the dune system, but rather in terms of abstract legal rights, determined in relation to the legal space upon which the dune complex was situated. This blunted the adaptive potential of the MEF, which was established to generate materially-attuned socio-spatial outcomes at Milnerton.

7.4. Wielding legal power through (mis)representation

Through visibilisng the role of place-frames in animating legal power, the Milnerton case study conveys the contingency of legal power on the representation of law's spatial constructs. Spatio-legal place-frames, and their supporting representational devices, constitute the apparatuses through which legal spaces and their associated meanings are materialised within informal planning processes. As the MEF demonstrates, those involved in the summoning of these place-frames may manipulate and reposition them to manufacture positions of empowerment and disempowerment within coastal space, as well as in the processes of decision-making through which informal planning unfolds.

Specifically, actors derive legal power from their positional identities in relation to abstract legal territories. These legal territories are conceptual constructs and are only internalised by actors through forms of spatio-legal representation, which 'apply, in rigid style, the ecological precepts of stable spatial boundaries, single scales, and the regular temporal quality of environments' (Zimmerer, 2000, p. 357). As the legal rights, restrictions and responsibilities of coastal actors are elaborated in relation to abstract legal territories, as depicted on maps, actors are conditioned to think of their positions and associational relations with others as being equally stable and enduring.

Consequently, the legal power geometries of place are temporally and spatially fixed in accordance with the momentary image represented on the map. Whereas water flows and sand shifts, mapped legal territories do not exhibit comparable transience. While law permits material changes to alter the spatio-legal arrangement of coastal space, such change may only occur under specific conditions of law's choosing – i.e. through the redrawing of legal boundaries and the reworking of territories.

This enables actors to mobilise temporally-fixed spatio-legal representations to obscure the dynamic recomposition and non-linear temporality of coastal place, and thereby preserve their positions of power within it. By serving as a substitute for the space itself, these representations assume the status of objective truth and provide a form of evidence that is difficult to challenge, unless actors are able to present proof of material change in a legally-digestible format (Hazen and Harris, 2006). Proof of this nature transcends pointing to a patently transformed shoreline and entails that a peripatetic HWM be reduced to a fixed position on a map.

As the Milnerton case study indicates, the legal determination of the HWM is a complex affair, requiring significant financial resources and technical knowledge. Moreover, the HWM is in constant motion, rendering the legal HWM a mere snapshot of the position of the HWM at a particular time (Christie, 2009). Accordingly, even once determined, the boundary between public and private land, by actors' own admissions, 'can be contested as the HWM is dynamic and constantly changes, so it cannot be defined specifically' (MEF, March 18, 2019). As a result, material changes within coastal places-to-be-planned are not always accompanied by a concomitant adjustment in the geometries of legal power. This impedes actors from meaningfully asserting claims within decision-making processes when material changes in coastal space prompt resource movements beyond territorial boundaries.

Spatial planning is increasingly conceptualised as an adaptive process that responds flexibly to changes in the material environment (Pitidis et al., 2023). However, the flexibility through which actors can structure socio-spatial relations may be constrained by the contingency of legal power on abstract forms of spatio-legal representation, which can be creatively deployed by actors to manufacture power dynamics in ways that produce inertial resistance to adaptive decision-making.

8. Conclusion

While informal coastal planning processes, like the MEF, are often heralded as platforms through which to promote adaptive and participatory socio-spatial decision-making; this rather rose-tinted perspective ignores the susceptibility these processes to the influence existing power geometries, fashioned by formal legal planning frameworks. Through processes of bracketing, legal planning frameworks carve up the relational lattice of coastal space into an arrangement of individuated power containers, situating actors within circuits of relative dominance and vulnerability, defined by reference to their physical location vis-à-vis bounded legal spaces. Legal planning frameworks thus, entrench 'deep asymmetries of power and authority' (Castree, 2015, p. 22) within coastal space, presenting actors with an alluring and potent mechanism to realise self-interest within socio-spatial decision-making processes.

Through accentuating the dependence of legal power on the visibility of law's territories, the Milnerton case study goads a deeper appreciation of the ways in which abstract spatio-legal constructs are embodied within actors' ontological understandings of coastal places-to-be-planned. In this regard, the mobilisation of spatio-legal place-frames within informal coastal planning processes, like the MEF, is identified as an important conduit through which legal power permeates these processes. Correspondingly, the mobilisation of alternative place-frames within these processes may unlock potentialities to dismantle entrenched power asymmetries constructed through the legal bracketing of coastal space.

This article has demonstrated the potential liability of adopting hegemonic spatio-legal place-frames within informal planning processes and in so doing, hopes to instigate a greater awareness of the role of place-framing in perpetuating the path-dependent influence of legal planning frameworks over informal planning arrangements at the coast. If new informal approaches to coastal planning are to realise their adaptive potential, actors must appreciate the involvement of the place-frames they advance and accept in dictating the structures of power and discursive interaction that ultimately, enable or disable transformative socio-spatial outcomes. Once summoned, the Milnerton case study demonstrates that, a spatio-legal place-frame may become an immutable construct by enabling the circuitry of power that perpetuates its own hegemony in the face of insurrection from more functional and relational coastal imaginaries. This, in turn, enables the influence of legal planning frameworks to haunt informal planning processes from within, condemning them to replicate the same maladaptive practices that they are often intended to ameliorate.

CRediT authorship contribution statement

Xavier Dominic Rebelo: Conceptualization, Data curation, Formal

analysis, Funding acquisition, Investigation, Methodology, Visualization, Writing – original draft, Writing – review & editing.

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Data availability

Data will be made available on request.

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