

## **Comments on the Spatial Planning and Land Use Management Bill**

6 June 2011

### **1. Introduction**

The following is a list of comments from Afesis-corplan, an NGO based in East London, dealing with settlement and good governance issues, on the new Spatial Planning and Land Use Management Bill (SPLUMB) of May 2011. It is in no particular order.

### **2. Improved planning**

We would like to congratulate the department on producing the bill and inviting comments. The bill will help to clarify the relationship of spatial planning to Integrated Development Planning and other planning legislation. The bill will help to clarify the role of various levels of government.

### **3. Opportunities for further comment**

It is unfortunate however that there is such a short timeframe for comments. We anticipate that there will be many comments from the public and the Bill may undergo fairly significant changes based on these comments. We therefore request the department to consider calling for (at least written) comments on any revision made to the Bill.

### **4. Capacity of the planning profession**

One of our main concerns of the bill is the capacity of the country to be able to implement and role-out the bill across the country. There are not enough planning professionals in the country to undertake existing planning and land use management functions at the moment. The new bill will require wall to wall planning across the whole country. It is often stated that South Africa has good legislation but bad implementation of this legislation (environmental legislation is a good example of this). The way the bill is presently conceptualised will result in the same thing being said about the planning sector. The bill/ legislation needs to be designed to take the reality of implementation capacity into account. For example it makes no sense to require people in more communal rural villages to have to conform to strict building line requirements and land use zoning requirements.

### **5. Special zones**

The concepts that have already been introduced in the bill of creating special areas for incremental development, and the creation of special zones (section 22.3.b), could be used to create areas where both more and less stringent land use management schemes may apply. This will have the effect of directing the limited town planning capacity to those areas where land use management is more appropriate and necessary. However, the concept of special zones needs to be more clearly defined. The unpacking of special zones could be in the definition section and/or in a schedule.

Some may argue that the creation of special zones will perpetuate spatial inequality in that some areas become seen as 'second class' where the level of regulation is reduced. We believe however that the advantages of accommodating more informal and more communal types of development will outweigh such negative connotations. The long term objective would be to work towards more equitable planning legislation across the country, but this will be achieved progressively over time.

Special zones could also be used in the context of zones of scenic beauty, view sheds, potential for wind energy development, areas of high potential agricultural potential, areas of cultural significance and heritage, etc. etc. It would help if the bill/ act made reference to such examples and allowed for others to be identified so as to give officials and the public an understanding of what is possible with regard to special zones.

## **6. Linkage to Environmental legislation**

The bill makes very little reference to environmental legislation. Consideration should be given to allowing appropriate levels of government to undertake strategic environmental assessments as part of the process of arriving at spatial development frameworks. In this way the Spatial development framework can pre-determine areas where environmental impact studies are not required for certain types of development. This environmental planning can also help to determine special zones. Consideration also needs to be given to looking at how the new Environmental management framework regulations can play a role in this regard.

## **7. Local Spatial Development Frameworks**

It is proposed that the bill should also make reference to local spatial development frameworks at a scale below the municipality. This will give more legitimacy to plans developed at this scale. Community participation can also be even more emphasised at this scale as this is a scale that is closer to the people. It is also likely that the identification and creation of special zones and incremental development areas would be easier to implement at this scale.

## **8. Initial Tenure as per section (VII) from the Development Facilitation Act (DFA)**

Section VII (seven) of the DFA made provision for a special tenure approach (that included initial ownership) to allow for a more rapid and incremental township establishment approach. This section was never used in practice, but we feel that with government's new emphasis on incremental development and informal settlement upgrading, similar approaches need to be facilitated. The incorporation of incremental development areas and approaches in the new SPLUMB goes some way to achieving this.

However, over and above the inclusion of incremental development areas in the SPLUMB, we propose that government commits, either in the bill itself or in some written public announcement, to investigate the need for and feasibility of a new piece of legislation or modifications to existing legislation to support more rapid and incremental settlement approaches. One example, for example, would be to consider something similar to the Flexible Land Tenure Bill from Namibia.

## **9. Definition of 'incremental upgrading area'**

It is proposed that the name 'incremental upgrading area' be changed to '**incremental development area**', or "incremental settlement area'. This will have implications not just in the definitions section but in other areas of the document where incremental upgrading areas are referred to. Further the wording in the definition section should read: "incremental development area means an area defined in a spatial development framework or land use scheme on which an incremental development approach is

accommodated and includes both areas where settlement has already occurred (referred to as Informal Settlement Upgrading) and areas where settlement will occur in future (referred to as managed land settlement).”

#### **10. Definition of ‘Incremental upgrading of informal area’**

The heading of ‘incremental upgrading of informal area’ should be changed to **‘incremental development approach’**. The definition should read: “Incremental development approach, means the progressive introduction of administration, management, engineering services and land tenure rights within an incremental development area.”

#### **11. Incorporation of concept of managed land settlement**

Within government there is no programme that specifically makes reference to the concept of land being made available prior to need and allowing people to develop this land in an incremental manner. The Upgrading of Informal Settlements Programme within the Department of Human Settlements comes close but it tends to emphasise the upgrading of areas where people already are living in an in-situ manner. It is proposed that the SPLUMB makes specific reference to both the upgrading of informal settlements programme (to cover upgrading from an in-situ base), as well as Managed Land Settlement (to cover upgrading from a Greenfield base). It is for this reason that reference to these programmes is made in the section above on ‘definition on incremental upgrading areas’.

#### **12. Communal areas**

It is proposed that a special section and an associated definition is introduced to the bill to deal with land in communal areas. Any definition of ‘communal areas’ needs to make provision for such areas to be classified as incremental development areas. The schedule on land use purposes also needs to include a communal land use purpose.

Communal areas are unique in their own right and deserve to be treated as a special case and not ‘lumped’ with other special zones (as discussed above). I have not gone into detail as to what needs to be included in a new chapter on planning and land use management in communal areas, as our organisation does not have sufficient experience dealing with planning in these areas. It is anticipated that there will be submissions and comments from others that will go into more detail on what can happen in communal areas.

#### **13. Land use purposes**

It is not very clear what the reason is for creating a schedule of land use purposes as it is currently drafted. It is proposed that at least in section 23 ‘content of land use schemes’ it can be stipulated that such schemes need to at least accommodate zoning for the purposes listed in the schedule on land use purposes.

#### **14. Multi-purpose land use purpose/ zone**

The schedule on land use purposes needs to make provision for multi-purpose land use. This could be accommodated by allowing land use zones, as created in the land use schemes, to be combined. One example of this would be the creation of a residential and business zone to allow for multi story buildings with houses above shops.

## **15. Community based planning**

The bill does make reference to community participation in the preparation of spatial development plans. However, it is proposed that the bill introduces the concept of community based planning into how plans need to be produced, as a way to emphasise the centrality of community participation in the planning process. The Bill then needs to instruct the minister (or MEC or council as appropriate) to develop regulations that govern how this community based planning needs to happen.

## **16. Composition of tribunals**

Consideration needs to be given to expand the composition of planning tribunals to also include 1) councillors, and 2) representatives of civil society (over and above the government officials and external specialist). The inclusion of councillors will help to improve the communication between the council and tribunals. Civil society representatives will bring a different perspective to these tribunals.

## **17. Combining tribunals**

Municipalities need to be allowed to combine their tribunals into multi municipal and district (regional) tribunals. This will also help in areas of low capacity to make sure that the limited human capacity is spread as far as possible.

## **18. Social function of land**

It is proposed that the concept of recognising the social function of land be included as one of the development principles in chapter 2 of the bill.

The SPLUMB should make reference to the Bill of Rights, but over and above this, the SPLUMB needs to start to introduce the concept of the social function of land into development discourse in the country.

## **19. Review of the concept of Land use zoning and land use management**

We believe that the present zoning scheme approach is very restrictive for poorer people. It puts many obstacles in front of people being able to do certain activities on their land. Ideally, it would have been good to have conducted a detailed review of the land use management and zoning system in the country with the intention of looking at options for how it can be overhauled and/or modified. Such a study would have helped to inform what could be said about land use management and zoning in the bill.

However, given that this has not happened we call on government to commission a series of studies to review existing land use management and zoning approaches, explore options, identify preferred alternatives, and produce detailed revised legislation and regulations for this.

## **20. Regular review of spatial planning and land use management approach**

The bill needs to commit government to regularly review, through a process that seeks input from other sectors and tiers of government as well as the public, its spatial planning and land use management approach and system. In other words, not only are Spatial Development Framework plans and land use management schemes reviewed but the whole approach or process of planning and land use management needs to be regularly reviewed.

One way to accommodate this is to add an additional function to national support and monitoring in section 9 of the bill that requires national government to regularly evaluate and review its existing legislation (i.e.

spatial development frameworks and land use management approaches) and make recommendations to the minister on how to adapt and improve the spatial planning and land use management legislation of government.

## **21. Institutional home for the spatial planning and land use management functions**

The Department of Cooperative governance and traditional affairs would ideally be the appropriate department to take responsibility for introducing and overseeing the implementation of SPLUM legislation. This department has a responsibility more in line with what the SPLUMB is all about. The period of drafting the bill should be seen as a period of transferring responsibility for this function from the department of Rural Development and Land reform to the Department of Cooperative Governance and Traditional Affairs. By the time the bill is passed this transfer process should have been concluded. As such, the definition “minister” in the bill should mean the minister of Cooperative Governance and Traditional Affairs.

## **22. Provincial legislation**

The SPLUMB does not repeal any provincial or old apartheid homeland planning legislation. The intention of the bill should be to lead to a situation where this old legislation is repealed by provinces, and replaced with new legislation that is more coordinated with and in line with the thinking of the SPLUMB. The national government should develop proposed provincial planning legislation and national government should also give provinces time frames within which to produce their own provincial spatial planning and land use management legislation. If provincial legislation is not produced within these timeframes, then the proposed provincial legislation developed by national government should be the default provincial legislation. When national government develops proposed legislation for a province they should make reference to the existing legislation that is being used to make sure that no gaps are created in policy. Taking just one small issue as an example, the Cape Provincial land use planning ordinance made provision for the establishment of Home Owners Associations to take ownership of and manage common spaces in townhouse type developments. The loss of such a provision will have serious effects on the management of existing and future home owner associations.

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