

Page & Section	Content	Extract from Bill	Proposal
Preamble	fragmentation	“ existence and operation of multiple laws”...” has created fragmentation, duplication”	In particular with regards to linear projects, the fragmentation over municipalities will increase the delays in essential service delivery
General: Servitudes			<p>From the definition of Land, we understand that servitudes are included. Servitudes, and particularly in the context of linear projects, do not usually alter the land use scheme. For example, Eskom power lines exist over hundreds of kilometres and farming continues under the lines as before.</p> <p>The national bill should be specific about excluding servitudes, in certain cases such as essential services, so this is carried forward into the provincial and municipal legislation.</p> <p>Essential services are needed irrespective of zoning, and should be exempted from the application and advertising process, as they are essential.</p>
	Engineering services	The definition only refers to electricity in general, but refers to municipal roads – and does not include provincial and national roads, rail etc. all services essential to a growing economy.	<p>If provincial and national roads can be excluded, then infrastructure delivery under provincial public enterprises, over which the municipality have no jurisdiction, should also be excluded, Electricity should only refer to that under municipal reticulation</p> <p>Eskom as a public enterprise falls under DPE and is regulated by national energy legislation, and the Department of Energy determines its plan for electrification. It thus should not fall under municipal jurisdiction,</p>

			either here or in the provincial bills.
	Land	and includes any improvement or building on the land and any real right in land	<p>This definition is far too wide and may even include improvements relating to painting a house or adding a feeder bay or small relay house to an existing substation.</p> <p>The recommendation is that the part from “Improvement...” be deleted.</p> <p>A real right is in land for example a usufruct, and has nothing to do with this Bill. Also such rights as right of way between two farms or for an irrigation pipeline should not have to go through this process.</p>
	Land Development	“means the erection of buildings or structures ..”	<p>Building and structures do not always impact on land use, for example a power line does not change the use, nor does a host of other structures</p> <p>The word structure should be deleted, and whether every building is land development is questionable – e.g. a farmer erecting a</p>

			shed is not
	External engineering services	“...situated outside the boundaries of a land area and which is necessary, as prescribed, to serve the use and development of the land area”	This needs to be better defined, as in the above, does it refer to municipal reticulation only or does it include electricity distribution and provincial roads? Also “land area” is not defined – is this restricted to the development area – such as a shopping centre?
Page 9 S5 (1)(c)	Categories of spatial planning	“the control and regulation of the use of land within the municipal area where the nature, scale and intensity of the land use do not affect the provincial planning mandate of provincial government or the national interest.”	This needs to be restricted to municipal planning under municipal jurisdiction. The constitution states that provincial public enterprises have jurisdiction over their functional areas in schedule 4 and 5 and that Provincial and national may regulate municipal planning It also needs to include after “national interest” the other organs of state and public enterprises interests.
Page 9 S6(1) and elsewhere in this chapter and the bill	Application of development principles	“apply to all organs of state and other authorities”	We suggest that the extent hereof be reviewed to ensure that organs of state and other authorities do not have their rights limited, since it will impact directly on their service delivery capacity. Again, as stated,

			the Department of energy regulates the areas where electrification takes place and may have different considerations.
Page 10 S7(b)(v)	Development Principles	"..must consolidate all current and future costs to all parties for the provision of infrastructure and social services in land developments"	Would this be the responsibility of the municipalities and if so, would they have the expertise to comment on services provided by external service providers?
Page 11 S9(3)	National support and monitoring	"The Minister may after consultation with organs of state..."	"may" should be substituted for "must" in order to make it peremptory for the Minister to intervene.
Page 12 S 10(2)		"A provincial legislation not inconsistent with the provisions of this Act may provide for structures and procedures different from those provided for in this Act in respect of a Province".	This clause would basically allow the Province to override national legislation, and it should either be struck or its powers limited – for example may only do so once it has held consultation with government departments and organs of state that are impacted.
Page 12 S10(3)(c)		"related tools and instruments"	The term related tools is only used here, instruments is used elsewhere as well, but nowhere is this defined. This allows anything and everything to be added under this clause, and should not be so. Either it needs to be struck or defined
Page 12 S11		Municipal Differentiation ".. of municipalities ..relating to .. spatial planning.."	The Bill here and elsewhere is far too wide in regards to municipalities – it should be limited to municipal planning under municipal jurisdiction here and elsewhere in the Bill
Page 12,13 & 14, sect 12(1) (g) (j) & (l) & 12 (6)	Preparation of SDFs	"(g) provide clear and accessible information to the public and private sector and provide direction for investment purposes (j) identify the long-term risks of particular spatial	We suggest that it would be useful if SDFs were to be provided in GIS format. The long term risk is that bulk electricity will

		<p>patterns of growth and development and the policies and strategies necessary to mitigate those risks”</p> <p>(l) promote a rational and predictable land development environment to create trust and stimulate investments”</p> <p>(6) Spatial Development Frameworks must outline specific arrangements for prioritising, mobilising, sequencing and implementing public and private infrastructural and land development investment in the priority spatial structuring areas identified in Spatial Development Frameworks.”</p>	<p>not be able to be built in time, nor will reticulation services be able to be delivered within NERSA turnaround times.</p> <p>None of the proposed content of the SDFs would assist with the provision of essential services. This needs to be carefully handled otherwise essential service delivery will be even more problematic than it is now, with even greater delays.</p> <p>In order to achieve this common ground will have to be reached by way for example of having information sharing sessions between municipalities and service providers to allow for more integrated transparent planning.</p> <p>Currently the municipalities and service providers work in silos.</p> <p>If the participation of service providers like Eskom is ensured at the outset during the development of SDFs, then it would not be necessary for it to apply for authorisation for each land development.</p>
Page 14 S13(4)(a)	NSDF	...the Minister must “give noticein the Gazette and the media....”	The term “media” is broad and need to be defined for different categories and sizes of projects.
Pages 13-17 Sections 13-21	For large linear projects	One would have to amend the NSDF, requiring review by the Minister, publishing in gazette and	It is not clear as to who has jurisdiction. If national has jurisdiction then this would confirm

		<p>media for comment, and approval by Cabinet and then publishing the final</p> <p>This then would flow into the PSDF, approval by Province, publication in gazette and media and then into the municipality</p>	<p>that the municipalities do not have unlimited powers.</p> <p>This was previously not required and will even make the processes and timelines to linear infrastructure longer, such as the Transmission lines . Further it is also not clear as to when this will kick in and as to what will happen to all the projects where national approvals would have been obtained when the Bill is enacted into law but prior to commencement of construction. These linear projects might then require amendments of PSDF and then MSDF</p> <p>This is so particularly in light of the very short turn around times required for the Independent Power Producers and other Eskom essential projects. It is recommended that essential services be exempt from this lengthy process</p>
Page 14, S 14	Content of NSDF	(3) "Provincial Spatial Development Frameworks must coordinate, integrate and align..."	(d) Please add organs of state re essential services such as electricity, roads – provincial and national, rail etc.
Page 15 S16	Content of PSDF	Service provision has been excluded as a component of content of a provincial SDF.	Co-ordination of all services is required at provincial level.
Page 15, S18(1) & (3)	RSDF	Organs of state also need to be consulted	After the following "The Minister, after consultation with the Premier and municipal Council" add "and consultation with organs of state"
Page 16 S19(c)	Content of RSDF	...(c) reflect the current state of affairs in that area from a spatial and land use perspective of the region	Suggestion is that it must reflect both current and planned future uses.
Page 16 S20(3)(b)	Preparation of MSDF	It is important before going out for public consultation that the organs of state are	Please add "and consult with relevant organs of State"

		consulted re input into the MSDF	
Page 16 & 17 S21(h)& (n)	Content of MSDF	<p>“(h) identify, quantify and provide location requirements of engineering infrastructure and services provision for existing and future development needs over the next five years”</p> <p>(n)determine a capital expenditure framework for the municipality’s development programmes depicted spatially</p>	<p>The input and consultation of service providers such as Eskom is essential and we suggest that this be provided for.</p> <p>This currently does not appear in some of the Provincial Bills – if Eskom has to adhere, this is vital that municipalities ensure that space / corridors are provided for essential electrical infrastructure.</p> <p>How would service providers integrate into these plans in areas where they are sole service providers?</p> <p>Also it infringes on the jurisdiction of provincial public enterprises in the Constitution under Part A of Schedule 4 lists under “FUNCTIONAL AREAS OF CONCURRENT NATIONAL AND PROVINCIAL LEGISLATIVE COMPETENCE - Provincial public enterprises in respect of the functional areas in this Schedule and Schedule 5, (that includes the functional areas in B (Electricity and Gas Reticulation) under jurisdiction of public enterprises such as Eskom.</p>
Page 17 S22(1)		A Municipal planning tribunal or any other authority required or mandated to make a land development decision in terms of this Act or any other law relating to land development, may not make a decision which is inconsistent with a Municipal Spatial Development Framework.	There should be a proviso/ overriding clause that if the MSDF has not adequately considered and addressed electrical infrastructure, then the planning tribunal can override the MSDF – this is to safe guard where the Municipalities have not taken this into account. This should be the case not only with the MSDFs, but also the RSDFs, PSDFs and NSDFs

			<p>The judgements did not find the Ordinances to be out of line, and the Ordinances allow for Provincial intervention as the judgement listed in the MacSand case</p> <p>The Constitution does allow for this under the schedules where functional areas assigned to municipalities, may be regulated by the national and provincial spheres of government to the extent defined in section 155(6)(a) and (7).”</p> <p>It is very important for development in SA that there is recourse to the provinces and national, and that tribunals are set up for this purpose, where there is no remedy at municipal level. Such remedies at provincial and national levels also need to include fast track processes for essential services by Public Enterprises such as Eskom to be able to deliver on projects that require urgent delivery</p>
Page 18 S 23 (2)	Role of the executive authority		We do not understand why only traditional councils may be involved in the preparation etc. of a land use scheme. We suggest that service providers such as Eskom also be included.
Page 18 S25(1)	Purpose and content of land use scheme	No provision is made for service provision	Suggestion is that you add the following after (d), (e) adequate service provision
Page 19, 26(1)	Legal effect of land use scheme	26. (1) An adopted and approved land use scheme: (a) has the force of law and all land owners and users of land, including a municipality, a state owned enterprise and organs of state within the municipal area are bound by the provisions of	It is a question whether electrical infrastructure alters a land use scheme, as electricity is required for each and every land use scheme type, and the underlying land use, especially with an electrical servitude remaining. Thus especially with servitudes

		such a land use scheme;	<p>these should not be included under the bill. The same should apply for sub stations, they are needed for every land use scheme.</p> <p>This also brings to bear the issue that the electricity services provided by Eskom is at a macro-level, and needs to be planned for appropriately. We also understand that municipalities will have to comply with the provisions of this intended act and will have to apply to a municipal tribunal for its projects. This is possibly not viable, and should not be the process for the provision of electricity infrastructure.</p>
Page 20 S30	Alignment of authorisations	It is understandable that the municipality has jurisdiction over subdivision and zoning, however is this the overriding legislation? The municipal legislation should be subservient to the national and provincial legislation	<p>The legislation should consider, where national and provincial legislation exists, the municipal requirements feed into national and provincial and not vice versa. So if having to apply under NEMA re an EIA, the municipality should comment with their requirements and not dictate / have the final say, especially where essential linear services are required.</p> <p>Section 30 omits linear projects and developments over municipalities and provinces, and as with the comment under section 22, the municipal tribunal should not be the overriding authority. This needs to be reviewed.</p>
Page 21 S32(5)	Enforcement of land use scheme	(5) An inspector contemplated in subsection (3) may(a) without previous notice, at all reasonable	This from an Environmental, Construction and OHS Act point of view is not feasible.

			times, enter any land for the purpose of ascertaining an issue required to ensure compliance with this Act... (g) seize any such book, record...(6) When an investigator enters any land in terms of subsection (5) a person who controls or manages the land must at all times provide such facilities	Most sites are strictly controlled and the Municipal official may not have the required training or authorisation to enter the site. Also certain records by law have to be on site and can't be removed. This would also necessitate that a site keep all sizes of safety boots to enable the inspector to enter the site from a safety perspective.
Page S33(1)	21	Municipal land use planning	“(1) Except as provided in this Act, all land development applications must be submitted to a municipality as the authority of first instance.”	At a minimum, the national legislation should enforce a joint publication and joint comment – for example place one advert for all – environmental, heritage and municipal and enforce one joint response from all I&As – currently an I&AP can delay the process by more than a year if he/she objects for each of the different levels of application, and they do make use of this process. In addition, or in the alternative, we suggest a list of “pre-approved” activities in respect of which no applications are required.
Page S36(1)(b)	22	Composition of Municipal Planning Tribunals	(b) persons who are not municipal officials.	It is conceded that not only municipal employees are eligible to be appointed, but it is suggested that service providers be included as members of the tribunal unless S36 9(1) (b) is meant to cover that category.
Page S43(2)(a)	25	Conditional approval application of	“a period of five years from the date of such approval”	A time frame of 5 years is too short as long lines are taking 5 years and more to just clear the environmental requirements. The recommendation is that where it is large linear infrastructure projects that these timelines can be set differently.

Page 25 S 45 (1)	Applications		We suggest that this be amended to include an applicant for engineering services. Eskom mostly constructs on the land of others and in accordance with this clause would not be able to make the application, other than by proving its interest first.
Page 26 S49(1) &(3)	Provision of engineering services	<p>(1) An applicant is responsible for the provision and installation of internal engineering services</p> <p>(3)Where a municipality is not the provider of an engineering service, the applicant must satisfy the municipality that adequate arrangements have been made with the relevant service provider for the provision of that service”</p>	<p>Subsection (1) contradicts the definition of “internal engineering services” in that the definition provides that the engineering service "...is to be owned and operated by the municipality or service provider”</p> <p>Where Eskom supplies electrical infrastructure to a person requiring to be connected to the grid, who would need to make the application? We suggest that this again highlights the fact that the services that Eskom provides need to be considered in this bill for the practical impact it will have on its activities.</p> <p>The applicant is often not the supplier of the essential services, there is no clear guide how the applicant or service provider is to go about determining who the service providers are for a particular area. The expansion of the grid needs to be catered for, and this is often outside the control of the applicant – current norm is that the Provincial department such as Environmental simply require a letter from the applicant that grid power is available. This gap needs to be</p>

			addressed.
Page 26 S50	Land for Parks, open spaces and other uses	Provision is made for the specified uses but not for provision of services	It is suggested that land be also specifically set aside also for provision of essential services. Thus it is suggested that essential services be specifically included and referred to in this clause.
Page 27S51	Internal Appeals	“...a person whose rights are affected by a decision taken by a Municipal Planning Tribunal may appeal....”	This can only apply where the municipality has jurisdiction. For example the Eskom right is between the land owner and Eskom. Eskom has paid for this right and had it registered to ensure OHS Act is adhered to for example, and the municipality has NO jurisdiction to alter this, nor should Eskom have to appeal issues such as this to the municipality.
Page 27 S52(1)	Development application affecting national interest	(1) Subject to compliance with the Promotion of Administrative Justice Act, a land development application must be referred to the Minister where such an application materially impacts on -	This would add another layer of bureaucracy to the process, which is not conducive to speedy delivery for essential services. The advice is to exclude essential services from this provision.
Page 28 S55	Exemptions	“The Minister may, in the public interest, on request from a province or municipality, by notice in the <i>Gazette</i>	This needs to be expanded to include organs of state – i.e. that the organ of state can approach the Minister for exemption. Delete “or” before municipality and Add “or organ of state” after It is very important for development in SA that there is recourse to the provinces and national, and that tribunals are set up for this purpose, where there is no remedy at municipal level.

			<p>Such remedies at provincial and national levels also need to be included.</p> <p>The national legislation should ensure that exemptions held nationally are included in provincial legislation</p>
		“(a) exempt from one or all the provisions of this Act a piece of land specified in the notice;”	This should not be restricted to a piece of land, but include parcels or corridors of land for linear projects such as electricity, pipelines, etc., and should perhaps rather refer to projects or types of projects that pieces of land.
Page 31	Schedule 1: Matters to be addressed in provincial legislation determine procedures relevant to the approval of an application for:	(g)(iii) procedures for the suspension, alteration or cancellation of servitudes or conditions of the title deed of property	See comments under page 63, S46 As stated there the Municipality can only change conditions that it has jurisdiction over, and the text needs to be reworded to reflect that
	Schedule 1	(g)(iv) the subdivision of land, including land use for agricultural purposes or farming land;	These and other sections such as consolidation etc. are governed first and foremost by the Land Survey Act. The Bill needs to state “in line with existing legislation”
		(g)(viii) the formalisation or incremental upgrading of an informal settlement or slums, including any matters related to tenure, land use	The above is reflective only of informal settlements and slums and does not provide for provision of services for other

		control and the provision of services to such areas	developments. The provision should be inclusive of all developments planned for all services, water, electricity etc.
Page 31	Schedule 1	(v)determine the process for payment of application fees	Cognisance should be taken of the fact that bulk service providers often work across municipal boundaries. As a result when determining the process for payment such should be noted and a rebate should be included.
Page 31	Schedule 1	(y) regulate the provision of engineering services and the imposition of development charges, including: (i) the form and content of service agreements; (ii) the installation of internal engineering services; (iii) the installation of external engineering services	This wording needs to be reviewed to meet current legislation and needs to be reviewed with NERSA, DoE and DPE, so it can be revised. Also this would infringe on the Constitutional rights assigned to Public Enterprises, as stated above.
Commencement		There are no timelines for commencement for development that are in progress during the Bill and when the Act comes into being. Major long term projects take years for approval, for example the Transmission lines, and if these are near completion, they should be exempted from this process, else the process has to be restarted	Timelines for commencement for development of linear developments and others need to be considered, as currently they are exempt. This would apply to any development project, due to the length of time for approvals