



DEPARTMENT OF ECONOMIC DEVELOPMENT  
GAUTENG PROVINCIAL GOVERNMENT, SOUTH AFRICA

Department of  
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Economic and

**SPLUMB/14/2012**

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Portfolio Committee on Rural Development and Land Reform  
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Attention: Ms Pumla Nyamza

**COMMENTS: SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012**

Comments have been requested on the Spatial Planning and Land Use Management Bill under reference B14-2012 in the National Press on 29 July 2012.

It is understood that the Bill is intended to be enabling legislation and to provide a framework for provincial legislation by each of the provinces. The current Bill is significantly different and an improvement on the previous draft of May 2012. There are however, some provisions which are uncertain or which do not appear to be entirely appropriate.

Please find attached hereto comments on the Bill.

Yours faithfully

MR S'BUSISO DLAMINI  
ACTING CHIEF DIRECTOR: DEVELOPMENT PLANNING

DATE: 8/2/12.

**COMMENTS ON THE SPATIAL PLANNING AND LAND USE MANAGEMENT BILL,  
2012 ("SPLUMB") FROM GAUTENG DEPARTMENT OF ECONOMIC  
DEVELOPMENT**

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**1. INTRODUCTION**

Certain provisions of SPLUMB will be in conflict with existing provincial legislation and with certain national laws relating to land use planning and development. Until those provincial and national laws are repealed, there will exist contradictory legislation for spatial planning. The Bill does not deal with this situation and does not provide measures in this regard. If SPLUMB prevails over provincial legislation, in particular existing Town Planning Ordinances, these provincial laws may not be capable of operation. In that case planning and development will cease until new provincial laws are enacted. It will therefore be necessary for this proposed national legislation, once enacted, only to be brought into operation in each province once new provincial legislation is in place.

**2. GENERAL**

In the government White Paper entitled "Wise Land Use" (June 2001) it is clearly established policy for a new planning system to be comprised of two distinct but complementary elements. These are "spatial planning" and "land use management". In sections 4 and 5 of SPLUMB, reference is made to "spatial planning" as including "land use schemes", "land development applications" and the "regulation of the use of land". There is a contradiction of national policy and also the fundamental concept of land use planning. The Bill also uses the term "spatial development planning" which creates uncertainty of meaning.

With regard to spatial planning, the national White Paper policy is very emphatic that this is forward looking policy, strategy and a general framework for future land use development. It is not and should not be a regulatory or control measure.

Spatial planning takes the form of Spatial Development Frameworks ("SDFs") which in section 12(2)(b) of the Bill are correctly intended to **guide and inform** planning and development decisions. The same "guiding" intention is contained in section 42(1)(a).

Section 22(1) however, prescribes that no land use development decision shall be **inconsistent** with a municipal spatial development framework. This has the danger of undermining the concept of spatial planning. Experience shows that the term "consistent with" is narrowly interpreted and is applied to mean that land use decisions must conform exactly to SDFs. Section 22(2) does provide some relief but it is suggested that sections 22(1) and (2) should be elaborated to make the status of SDFs much clearer. This issue in the past has been the subject of major disputes.

The second general issue of concern is the provision in the Bill for appeals against development decisions. The "internal appeal" mechanism in section 51 is considered unsatisfactory.

A decision of a Municipal Planning Tribunal by construction is a decision of the municipality. An appeal to the "executive authority" of a municipality therefore becomes an appeal to the same body which made the decision in the first instance. This is a poor legal principle and does not properly meet the requirements of transparency and administrative justice.

It is furthermore noted that this appeal mechanism places decision making in the hands of elected political representatives. Such a procedure is specifically not intended by the White Paper policy and it is also at odds with the criteria in the establishment of the Municipal Planning Tribunal (see section 36(2)).

It is suggested that an alternative mechanism for appeals should be created. In this regard there is uncertainty as to the extent that a province can legislate different provisions for appeals in terms of section 10 of the Bill.

### 3. PARTICULAR MATTERS

The following are some of the particular provisions of the Bill which should be given further consideration.

#### Section 44:

This provides that the Minister **must** prescribe timeframes for land use application procedures. Schedule 1 however, also allows provincial legislation to prescribe these time frames (paragraph (w)). It is not clear what the position will be if there are differences between the national and provincial legislation in this regard.

The same concern as above relates to appeals in paragraph (z) of Schedule 1 and the provisions of section 51 regarding appeals.

With regard to section 51(4)(b) it appears impossible that a municipality can or will appeal a development decision. The decision is made by the municipality itself and there cannot be circumstances where it would appeal against its own decision.

The provisions of section 51(4)(c) and (5) appear too narrow and restrict the persons who may appeal as "interested parties". It is likely that this restrictive definition of an interested party will lead to considerable dispute and litigation. It is suggested that these provisions be reconsidered.

### 4. CONCLUSION

In general terms the structure and provisions of SPLUMB are appropriate as national framework legislation and can be supported in principle. However, as will appear from the comments above, there are some matters which are too prescriptive and invite conflict with existing or future provincial legislation.