



SUSTAINABLE DEVELOPMENT & CITY ENTERPRISES

Development Planning, Environment & Management Unit

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Portfolio Committee on Rural Development and Land Reform
3rd Floor,
90 Plein Street
Cape Town 8001

Attention: Ms Phumla Nyamza

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COMMENT ON SPATIAL PLANNING AND MANAGEMENT BILL [B14 – 2012] BY THE ETHEKWINI MUNICIPALITY

Further to the recent notice that appeared in the national press calling for comments on the Spatial Planning and Management Bill, 2012 before 8 August 2012, I refer.

Please note we have previously on a number of occasions submitted comments on the Bill to the Department of Rural Development and Land Reform, but believe we need to highlight our concerns directly to the Portfolio Committee on Rural Development and Land Reform. Accordingly, please find attached a summarized schedule of our major concerns which has been updated in a second column were appropriate following the publishing of the most recent version [B14 – 2012] of the Bill.

If the committee elects to hold hearings, we would be much obliged if an opportunity could be extended to the eThekweni Municipality, and specifically to our Head: Planning Development Environment and Management, Ms ST Moonsammy, to elaborate verbally on our concerns.

Yours faithfully,



MS ST MOONSAMMY

HEAD: DEVELOPMENT PLANNING, ENVIRONMENT AND MANAGEMENT

Cc Mr Sunday Ogunronbi – Chief Director, Rural Development and Land Reform
Ross Hoole – Director, Rural Development and Land Reform (KZN)
S Moonsammy – Head: Development Planning Environment and Management
Nokhana – Head Legal

ETHEKWINI MUNICIPALITY: PRIMARY CONCERNS ON SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012

Priority	Primary Concerns	Comments based on SPLUMB, 2012 - Version of 21 Feb 2012	Additional Comment with respect to SPLUMB ver. B14-2012
1	Appeal Process.	The provisions within SPLUMB provide only for an internal appeal process to the municipality's executive authority which is composed of councillors. These councillors will have to be advised by the very same staff that made the original planning decision - often the very same staff particularly in smaller municipalities. It is totally undesirable where a municipality becomes both a player and a referee. The section 62 Municipal System Act appeals brought this very aspect to light and many applicants, although afforded the opportunity, elected to go directly to the KZN Town Planning Appeal Board or Planning and Development Commission for consent and reasoning appeals respectively, so that an independent and objective authority could make a decision. It is furthermore desirable that there be only one appeal opportunity available so as not to draw out unnecessarily the process with resultant delays and costs and lack of or abandonment of development. It is also necessary to avoid frivolous appeals to each possible appeal authority for maximum delay by objectors. (Many objectors will in addition appeal the environmental authorisation if applicable). A provincial appeal authority is effectively precluded by the SA Constitution, but groups of District Councils and/or Metros could nominate suitable independent experts or candidates to sit on Appeal Tribunals and thereby avoid the constitutional dilemma. A further aspect to consider is that planning capacity is very stretched in the country and particularly so within some provinces and municipalities. It is not desirable that these staff become embroiled in both adjudication of applications and appeals which will further limit their capacity and delay processing of applications. This ultimately delays development within the country and so the generation of work opportunities.	Additional Comment with respect to SPLUMB ver. B14-2012 s51 (Internal Appeals) provides for an appeal notwithstanding s62 of the MSA. It does not appear to exclude s62 appeals although this is the stated intention as per discussions held with DRDLR. No external or additional appeal to an independent body is provided for.
2	Exclusion of Councillors from Decision Making Process on Applications	While it is agreed that municipal councillors should give general direction, provide policy and approve the spatial development framework contained with the integrated development plan (and down stream policy plans), it is also believed that councillors should have direct involvement in at least the zoning/rezoning process, albeit that they might elect to delegate this responsibility downward to officials. The municipal councillors are elected in a democratic process by the people and this should be reflected in SPLUMB. A suitable delegation process should be contained in this regard within the provisions.	s35 provides for a Municipal Planning Tribunal or an authorised official to consider planning applications. s36 provides for officials and external experts to be appointed to the Municipal Planning Tribunal, numbering at least 5 in total, but specifically excludes all Councillors.
3	Linking Mechanism to Provincial Acts	While Schedule 1 of SPLUMB makes it clear that there are to be provincial acts and outlines in some detail what these Acts may contain, there are no specific sections within the bill that appear to link it to these provincial acts or that spell out what the situation is when there is no such (new order) act and/or (old order) ordinance.	s10 (1)(a) now provides for provincial legislation, not inconsistent with the Act (SPLUMB) and the Inter-governmental Relations Framework Act, to provide for matters contained in Schedule 1, s10 (2) goes on to provide for such provincial legislation to provide for structures and procedures different from those contained in the Act (SPLUMB)
4	Framework Legislation	It has been stated that SPLUMB is intended to be framework legislation and as such it forms the basis for parallel provincial legislation. However, the bill is very detailed and takes on more the form of primary legislation that has to be compiled with at a very detailed level. While this is perhaps understandable where certain provinces do not have their own new order planning and development legislation, a one size fits all approach is not appropriate. Ideally it should be stripped down and the necessary detail contained in regulations and which would only apply when there is no new order planning and development legislation in place.	See s10 comments above. This goes part of the way to address the concerns.
5	Accompanying Regulations	The lack of accompanying regulations is a serious short coming which needs to be addressed before the bill is enacted.	Nil provided.

ETHEKWINI MUNICIPALITY: PRIMARY CONCERNS ON SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012

Priority	Primary Concerns	Comments based on SPLUMB, 2012 - Version of 21 Feb 2012	Additional Comment with respect to SPLUMB ver. B14-2012
6	Transitional Measures	The lack of transitional measures is a serious short coming which needs to be addressed before the bill is enacted.	s60 states that laws repealed in Schedule 3 or by a provincial legislature in relation to planning does not affect the validity of anything done in terms of such legislation, while DFA tribunals may continue to function until all outstanding matters are decided or disposed of; provided that the Minister may set a conclusion date. It is considered that more than this is required.
7	Comment Period	It has been clear from the various presentations made by DRDLR that SPLUMB had to be enacted by 17 June 2012, when the DFA would fall by the wayside as per the Concourt ruling. Recent discussion have now indicated that the bill, as an act, will not be put in place until such time all the discrepancies have been addressed and the lacking regulations and transitional measures produced, advertised for comment, and modified in accordance with such comment. It is also understood that legal action has been brought by the SA Association of Consulting Planners with a view to Concourt extending the 17 June 2012 deadline for the demise of the DFA. Furthermore that DRDLR will not strongly oppose such extension. On this basis this matter may fall away.	It would now appears, following a very recent judgement, that Concourt will in all likelihood not agree to the 17 June 2012 deadline being extended.
8	Alignment between SPLUMB and Provincial Planning and Development Acts	It is clearly necessary that both SPLUMB and the respective provincial acts be brought into closer alignment. Such a process can not happen overnight and provision needs to be made for it. It is assumed that the transitional measures will give guidance in this regard.	See s10 comments above. This goes part of the way to address the concerns.
9	Transitional Window	It is inevitable that there will be certain applications brought by both developers and initiated by municipalities that will be caught between the current and the future planning legislation scenarios. Sometimes this will also include a high court review process. An adequate transitional period is required to ensure that time and effort expended on these processes is not wasted. It is assumed this will be addressed in the transitional measures. A minimum period of two years is required.	
10	Inclusion of Development Charges in respect of Open Space for Ecosystem Goods and Services	While the extension of the possibility of raising development charges in respect of open space is welcomed, it is considered that this also should be extended to open space of a non park, sportsfield or playlots type, i.e. in respect of passive open space providing ecosystem goods and service, without which the municipality would have to make major investments to replace, if even possible.	
11	Alignment with Municipal Systems Act	Close alignment between Chapter 4 of the Municipal Systems Act, dealing with integrated development plans and spatial development frameworks, and SPLUMB is required. Ideally all such requirements should reside in one place.	
12	Acknowledgement of Intermediate plans.	There is a need for SPLUMB to formally acknowledge all downstream plans sitting below the spatial development framework but before the detailed land use management plans or schemes. These include spatial development plans aka regional spatial development frameworks, local area plans, precinct plans, etc. i.e. policy plans which effectively form closer interpretations of the spatial development framework while still not assigning specific development rights.	
13	Traditional Areas	Apart from addressing areas that were previously addressed in terms of the Regulations Relating to Township Establishment and Land Use, 1986 (R. 1987 of 1986) read with Section 33 of the Black Communities Development Act No 4 of 1984, the Township Development Regulations for Towns, 1990 (R. 1886 of 1990), the Land Use and Planning Regulations, 1990 (R. 1888 of 1990) read with Section 30(1) of the Black Administration Act No 38 of 1927 and the KwaZulu Land Affairs (Town Planning) Regulations (GNU 38 of 1994) read with Section 37 of the KwaZulu Land Affairs Act No 11 of 1997, SPLUMB provides an ideal opportunity to address the matter of the traditional or tribal areas and which never formed part of mainstream planning control in the past. This is necessary in order to eradicate the legacy of apartheid planning where there was a dual system operative through the country.	

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14	Definition of Municipality	It is not clear what is meant by a municipality. The elected councillors, the elected councillors and the officials, the officials, or a combination of elected councillors, the officials and the communities that elected the councillors? This needs to be expressly defined in the act and/or regulations to avoid subsequent potential litigation.	The definition for municipality as now contained in s1(1) refers to s 155(4) of the Constitution and further for the purposes of the Act (SPLUMB) clarifies it as including a municipal department, the Municipal Council and the municipal manager, where the context so requires.
15	Removal of Section 62 of Municipal Systems Act Appeal in respect of planning matters.	It is desirable that there be only one appeal opportunity available to both applicants and objectors. While in discussion it was intimated that section 62 appeal mechanisms contained in the Municipal System Act would not be available in the future, this is not absolutely clear in the current wording of SPLUMB.	
16	Amendment of the Municipal Fiscal Powers and Functions Act No 12 of 2007	While SPLUMB cannot be a monetary bill, it is necessary that the Municipal Fiscal Powers and Functions Act No 12 of 2007 be amended to directly provide for the collection of Development Charges and without which this provision will be meaningless or will likely lead to court cases contesting its application by municipalities. The National Treasury should therefore be urged by DRDLR to expedite such amendment.	
17	Capacitating Process	In rolling out the KZN Planning and Development Act No 5 of 2008 a major supportive role has been played, and continues to be played, by the KZN Department of Cooperative Government. This included preparation of what was required of both officials and councillors prior to the implementation of the PDA, monthly workshops held for both municipalities and for the private sector, an Internet forum, etc. Despite this very significant effort by COGTA problems have still emerged. This has helped highlight needs for certain amendments to the KZN PDA. In respect of SPLUMB a similar process is required, but no detail is provided.	While s9 and s10 provide for National and Provincial support respectively, the necessary support and capacity needs to be put in place prior to implementation of the Act (SPLUMB).
18	Guidelines	Ideally certain accompanying guidelines should be prepared, such as was done by the KZN COGTA by the way of the Land Use Management Guidelines. This may if necessary be undertaken in time.	A "Memorandum on the objects of the SPLUMB, 2012" is now provided at the end of the bill. If this is to form part of the final act, and possibly further expanded, it should help in interpreting matters lacking clarity in the future.
19	Conflict in legislation - National Environmental Management Act 107 of 1998, et al.	Which legislation takes precedence in the event of a conflict? In the event of an appeal in a joint decision, who is responsible for hearing the appeal the Minister/MEC responsible for environmental matters or other?	s30 appear to provide for both separate and integrated authorisations but the problem of an appeal remains in an integrated authorisation. If the planning appeal body is to be only an internal appeal body the relative statuses possibly further compounds the dilemma.
20	Conflict in legislation - National Building Regulations and Building Standards Act No 103 of 1977	Which legislation takes precedence in the event of a possible conflict? In the event of an appeal who is responsible for hearing the review, the SABS review board or other?	s30 appear to provide for both separate and integrated authorisations but the problem of an appeal remains in an integrated authorisation.

