

Comments on SPATIAL PLANNING AND LAND USE MANAGEMENT BILL [B14—2012]

My comments relate **only** to the issue of *sustainable human settlements*: I tried to determine to what extent the Bill enables or facilitates sustainability.

Summary

With the exception of the requirements of chapter 2, clause 8: “norms and standards” which - one can only hope - may provide a set of criteria whereby our quest for sustainability could be made active, the Bill falls far short of promoting sustainable development. It will be much more effective if one of the requirements under subclause 8(2) require sustainable development criteria.

Although the Bill does refer to sustainability, the issue is not addressed in a systematic way to enable a programme whereby sustainable development could be actively facilitated. There is not even a definition of sustainable development in the Bill, nor are measuring standards or criteria provided to assist officials to fulfill the objectives of the NSSD1.

Reference in the Bill to environmental matters are all ‘mitigatory’, to counter negative effects. Nowhere in the Bill is custodianship of the Commons or Natural Capital addressed.

In accordance with the Bill, it will be possible for municipalities to continue with *business as usual*... nothing in the Bill guarantees an outcome of sustainable communities, **except** if wide-awake citizens take on municipalities in terms of clauses 24(2) and 25(1). Is it not possible to refer to the NSSD1, so that officials are forced to apply sustainability metrics through the Bill? As it stands, the Bill is not specific enough in its requirements to enable sustainable human settlements.

It would be best if specific sections are addressed with their own sustainability criteria. I suggest the Bill need to refer specifically to

1. buildings (passive design, low energy embodiment)
2. services (demand management)
3. the commons and natural resource use (custodianship and preservation)
4. waste and pollution (zero waste as ultimate aim)
5. equity (race, age and gender)
6. spatial form (compact, efficient, diverse, multi-functional)

For detailed comments, see below; my comments are a bit tedious because I dissected the Bill clause-by-clause, with my comments cut and pasted throughout the Bill’s text. Original text is in Times New Roman font and my comments in Souvenir font.

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What does the Bill say?

The preamble explains that one of the reasons for the Bill is in response to:

“unsustainable settlement patterns”

...so, the Bill defers to the Constitution’s section 26, which guarantees citizens the right of access to adequate housing, including an equitable spatial pattern and sustainable human settlements. So far, so good...

CHAPTER 1

INTRODUCTORY PROVISIONS

Sections

1. Definitions

- *Sustainable development* and *sustainable human settlements* are not defined in the Bill.
- *Viable communities* is not defined

I would suggest that these terms should be clarified by referring to the definitions thereof in the NSSD 1 (or in government strategy which is current at the time).

3. Objects of Act

Here, reference is made to some principles of sustainability, namely *social and economic inclusion*, the *sustainable* and *efficient use of land* and *equity*. However, this is not comprehensive - also see comments under clause 7.

4. Spatial planning system

No mention is made of, nor reference made to any element in the system which could promote sustainability (although such elements do exist, such as NEMA, the NSSD 1, DEA’s National Greening Framework, *Breaking New Ground* and others).

5. Categories of spatial planning

No mention made of strategies for sustainable development in the various categories.

CHAPTER 2

DEVELOPMENT PRINCIPLES AND NORMS AND STANDARDS

6. Application of development principles

Development principles are to “...guide... the sustainable use and development of land” provide for “spatial justice: access (land, tenure) and inclusion (poor)” and for “spatial sustainability...” Furthermore, some aspects are expounded a bit (quoted - the yellow highlighted text denotes reference to sustainable substance or procedure):

- “(ii) ensure that special consideration is given to the **protection** of prime and unique **agricultural land**;
- (iii) uphold consistency of land use measures in accordance with **environmental management** instruments;
- (v) consider all current **and future costs** to all parties for the provision of infrastructure and social services in land developments;
- (vi) promote land development in locations that are sustainable and **limit urban sprawl**; and
- (vii) result in communities that are **viable**.”

7. Development principles

- (a) “**spatial justice**”, where it is implied that sprawl with the poor on urban periphery, should be countered;
- (b) “**spatial sustainability**”, a repeat of the principles under section 6, ie. Land management, environmental

management and costs and viable communities... We shall see later that these statements - although valid - are just too general and vague to be of use in practice; we have no criteria which to measure it by.

c) “efficiency”, which sounds ominously like *business as usual*;

(d) “spatial resilience”, flexibility in spatial plans, etcetera... to ensure sustainable livelihoods in communities - actually a very vague statement;

(e) “good administration”, which also sounds like *business as usual*.

The development principles (see also Objects of the Act) are not comprehensive. Theory on sustainable development show that two sets of principles should apply: substantive and procedural and that they should not be confused with each other. The purple highlights above denote substantive and the green highlights denote principles of procedure. There are many more substantive principles which underlie sustainable human settlements and viable communities. Some are: identity, safety and health, zero waste, local resources, local autonomy, and diversity. Not being specific when referring to principles, the Bill cannot really guide local authorities to change their ways from *planning as usual*. Alternatively, the Bill should - if it cannot identify the principles clearly - refer to strategy documents where principles and actions **are** identified clearly.

8. Norms and standards

Compulsory norms and standards are to be prescribed whereby sustainability may be promoted:

(2) The compulsory norms and standards must—

“(b) promote social inclusion, spatial equity, desirable settlement patterns, rural revitalization, urban regeneration, and sustainable development;“

One can hope that these norms and standards will address the shortcomings with regard to lack of specificity in the Bill.

CHAPTER 3

INTERGOVERNMENTAL SUPPORT

No specific mention of support programmes or systems to promote sustainability.

CHAPTER 4

SPATIAL DEVELOPMENT FRAMEWORKS

Part A

Preparation of spatial development frameworks

12. Preparation of spatial development frameworks

In the preparation of SDFs, efficient, sustainable and planned investments must be promoted, cognisance taken of any environmental management instrument, effect given to national legislation and policies on sustainable utilisation and protection of agricultural resources; and substantial public engagement... also fairly broad - maybe too broad to foster inclusion of sustainability measures.

Part C

Preparation, content and legal effect of provincial spatial development framework

16. Content of provincial spatial development framework

Many points made do not differ much (or at all) from current planning-speak. See for instance, clause 16 (b): indicate the desired and intended pattern of land use development in the province, including the delineation of areas in which development in general or development of a particular type would not be appropriate; This is obvious, but **how** should it be pursued to bring us closer to sustainability?

Part D

Preparation and content of regional spatial development framework

19. Content of regional spatial development framework

...must give effect to

- the development principles in chapter 2;
- national and provincial policies, legislation, etc
- be consistent with environmental legislation.

Not much could be done about this; in practice it will probably depend on the specific Director-General and his senior staff's interpretation which will determine the actual outcomes, per province.

Part E

Preparation and content of municipal spatial development framework

Section 21A (content of municipal SDF)

...with regard to equity (i) identify the designated areas where a national or provincial inclusionary housing policy may be applicable;

...with regard to environment (j) include a strategic assessment of the environmental pressures and opportunities within the municipal area, including the spatial location of environmental sensitivities, high potential agricultural land and coastal access strips, where applicable;

These above are correct, but again, not comprehensive: an SDF needs to address all the principles of sustainability.

CHAPTER 5

LAND USE MANAGEMENT

Clause 24(2)

A land use scheme adopted in terms of subsection (1) must—

(b) take cognisance of any **environmental management instrument** adopted by the relevant environmental management authority, and **must comply with environmental legislation**;

(d) include provisions to promote the **inclusion of affordable housing** in residential land development;

(e) include land use and development **incentives** to promote the effective implementation of the spatial development framework and other development policies;

(f) **include land use and development provisions specifically to promote the effective implementation of national and provincial policies**; and

The latter is important and can have far-reaching implications.... the determining term here is the “must” at the beginning of the clause, for, in terms of this, “we, the people” can force a municipality to include energy, water and waste metrics which would promote the NEM: Waste Act (Act 59 of 2008), the National Strategy on Sustainable Development (NSSD 1), National Greening Framework, Breaking New Ground, and others.

25. Purpose and content of land use scheme

(1) A land use scheme **must give effect** to and be consistent with the municipal spatial development framework and determine the use and development of land within the municipal area to which it relates **in order to promote**—

(a) economic growth;

(b) social inclusion;

© efficient land development; and

(d) minimal impact on public health, the environment and natural resources.

No specific reference is made to sustainability; the triple-sector approach of environment, society and economy may not be specific enough to “give effect to” sustainable communities.

Enforcement of land use scheme

32. (1) A municipality may pass by-laws aimed at enforcing its land use scheme.

Can we pass pro-active by-laws, to facilitate and promote ‘good behaviour’, such as providing

incentives for planning and building green...? Should we not rather say here that the municipality **must** pass bylaws which would give effect to intentions of the Scheme... and expand those to include such as:

- at least 20% (or 15 or 25) of housing stock in all new developments must provide for social housing, to be jointly developed by the developer, a housing utility and/or the council;
- rainwater harvesting is compulsory for all new developments after date of the scheme
- solar water heatingditto
- permeable paving for all paved areas, where soil conditions allow
- water-wise gardening is compulsory...
- passive building, in accordance with the GBCSA's criteria for all government/public buildings
- rebates on municipal rates / taxes for all voluntary measures over and above the minimum requirements.... say, for every kilolitre less water use than a certain norm...