

SUMMARY OF COMMENTS MADE ON SUBMISSIONS AND DURING PUBLIC HEARINGS

The Portfolio Committee on Rural Development and Land Reform received 32 written submissions on the Spatial Planning and Land Use Management Bill (B 14 -2012, 'the Bill') from various stakeholders and had public hearings on 21 – 22 August 2012. Below is a summary of key issues raised and the recommendations made in the submissions and during public hearings. These are divided into general and specific comments on the Bill.

GENERAL COMMENTS

ISSUES	COMMENTS	PROPOSALS
Consultation	Not adequate consultation No feedback on the comments	Provinces and local government should have been involved in the drafting of the Bill More time needed for meaningful public participation especially small towns and cities need to be consulted not just via SALGA.
Public Participation/consultation	Public Participation/consultation is not addressed adequately in the Bill	The Bill should facilitate participation and meaningful involvement of communities themselves
Framework Legislation (Framework vs. Comprehensive legislation)	The Bill is too prescriptive as framework legislation as it prescribes how Local Government should exercise its decision. The Bill is not detailed enough to clarify roles and responsibilities between the three spheres of government with regard to spatial planning and land use.	
Cost of Planning	The Bill will increase the cost of planning system and therefore becomes un-affordable for the poor and middle class. Any development is subject to planning and building controls, which require payment for consent.	The Department of Rural Development and Land Reform (DRDLR) should take a cost review exercise of planning on the applicant.
Constitutionality of the Bill	The Constitutionality of national government to make legislation on spatial planning and land use management	Need clearly defined responsibilities for national, provincial and local government in

	<p>is questionable because these are areas of concurrent powers for provincial and local government.</p> <p>The Bill is proposing an interference on municipal planning by national and provincial governments and thus opening the Bill to Constitutional Court challenge (see sections on Intergovernmental support & Interventions in Functional areas of Municipal competence below) .</p>	planning.
Land Tenure and land use Communal areas	<p>The Bill is silent on the status of customary tenure and the rights of customary communities.</p> <p>The Bill is silent on land reform.</p>	<p>The Bill must provide guidelines, regulations and capacity to integrate land development and land tenure across different spheres.</p> <p>The Bill needs to give guidance on how provincial legislation will deal with land use management in areas falling under traditional authorities.</p> <p>Spatial Development Frameworks (SDFs) should consider land release and acquisitions</p>
Alignment with other laws	<p>The Bill ignores existing national and provincial planning legislation. It assumes that all existing provincial laws will be repealed and new planning laws will be adopted. This creates parallel processes.</p>	<p>There should be one piece of legislation dealing with spatial planning and development (recommendation of the White Paper on Spatial Planning and Land Use, 2001).</p> <p>The Bill must include references to other laws impacting on land use.</p>
Custodian of the Bill	<p>It is questionable whether the DRDLR should be the custodian of the Bill/Act.</p>	<p>Department of Cooperative Governance and Traditional Affairs as the appropriate custodian of the Bill/Act</p>

SPECIFIC COMMENTS

CHAPTER	ISSUES	COMMENTS	PROPOSALS
1	Definitions	Some terms used in the Bill are not defined while others are defined but not used in the Bill (see appendix in page 11).	
3	Intergovernmental Support	<p>The provision on intergovernmental support is a repetition of section 154 of the Constitution (clause 9)</p> <p>To address poor capacity among municipalities (both funding and skilled staff) the Bill obligates the Minister to provide support and assistance within available resources,</p> <p>Not clear how the support will be provided.</p> <p>It is not clear in the Bill what happens when the Bill conflict with other legislation, e.g. with National Environmental Management Act, 1998(Act 107 of 1998). Which legislation takes precedence?</p>	<p>Bill should allow for functions to be gradually transferred to municipalities</p> <p>The DRDLR must conduct municipal capacity assessment and ensure that the necessary capacity is developed to implement the provisions of the Bill.</p> <p>Support should be provided if requested by relevant local authority or if it is clear that it is not in position to deliver on its obligation.</p> <p>Conflict and dispute resolution could be adequately addressed by the Intergovernmental Relations Act (Act 13 of 2005).</p>
2,3,4 and 6	Intervention in Functional areas of Municipal competence (Clause 12,18,20, 21,22,36 & 37)	<p>The power of Minister to prescribe norms and standards is seen as interference in provincial and municipal planning (clause 8(1).</p> <p>Clause 18(3)(b) which permits the Minister to declare a Municipality a Region if the municipality fails to</p>	

		<p>amend or review its SDF and then he take over responsibility of preparing its SDF. This is seen as usurpation of municipal executive authority by the Minister.</p> <p>Section 22 (3) gives the Premier the authority to take charge to ensure consistency of municipal SDF and provincial SDF without consulting municipality if provincial SDF is inconsistent with municipal SDF. This is undermining the exclusive power of municipality over municipal planning.</p> <p>Matters in schedule 1 for provincial legislation are areas of municipal functional competence and therefore seen as an interference of province on powers of municipality. This implies that clause 10 might lead to encroachment on the functions and powers of Municipality.</p> <p>Clause 52 (5) (b) says that when an application involves issues of national interest the Minister may decide on such application.</p> <p>Provisions that allow intervention by the national or a provincial sphere of government in the local sphere of government (section 18(3), 37(3) and 54(1) are consistent with section 139 of the Constitution.</p>	<p>When an application involves issues of national or provincial interest these spheres should join only as party to the decision instead of taking decision.</p> <p>National monitoring of municipalities should be done through provincial governments as it is required in terms of section 139 of the Constitution and not the national government to bypass provinces.</p>
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4	Spatial Development Frameworks	<p>There is no need for each sphere to produce its SDF as it creates confusion.</p> <p>The Bill is too prescriptive on how the municipality should adopt its SDF</p> <p>SDFs are already established through MSA and the Bill does not seem to relate to MSA.</p> <p>The 5 year cycle for the preparation of National, Provincial and Municipal SDFs and Land Use Scheme are not feasible need to be reviewed.</p> <p>Review cycles not feasible and need to be carefully coordinated.</p> <p>It is not clear how the Bill will ensure alignment of the national, provincial and municipal SDFs.</p>	<p>Only municipality should produce SDF after consultation with the other spheres.</p> <p>Need to align with MSA</p> <p>A long term for reviews 15-20 years</p> <p>Need to have SDF guidelines</p>
	Mining	<p>The Bill fails to recognise the historical impact of mining on communities, which creates a need for the Bill to make special consideration when applications for land use change and land development are made in the context of mining.</p>	<p>Clause 12(1) (n) should include that cognisance should be taken of the significant impact of mining on natural resources and therefore extra measures should be put in place.</p> <p>Rezoning of land for mining purposes should be subject to strict scrutiny and special considerations should apply to such applications. This is to ensure special considerations to be taken before decision is made whether land use can be changed for mining use in order to protect prime agricultural land being rezoned for mining purposes.</p>

			<p>Mining as national interest should be elevated to ministerial level and all applications relating to mining should be submitted to the Minister of Mineral Resources.</p> <p>All land development applications to be submitted to the Minister of Mineral Resources because they have potential to impact on mining.</p>
5	Land Use Schemes	<p>The Bill does not provide for adequate public participation in the decision making processes especially for traditional communities</p> <p>The requirement for municipalities to adopt a land use scheme within 5 years of approval of the new law is not feasible.</p> <p>Timeframes for review of land use schemes are not feasible.</p> <p>Clause 26(1)(b) which provides for replacement of all existing land use schemes with new schemes is contradicting clause 26(6) which contemplates that existing land use schemes will not be repealed or replaced by new schemes.</p>	<p>Provision should be made for rural communities on communal land to participate concerning the development and use of its land, particularly in relation to mining operations.</p> <p>Reviews of MSDF and PSDF should be every ten years instead of five years.</p> <p>The Bill should contain provisions to deal with situations when land use schemes are not reviewed.</p> <p>An official designated by municipality to consider and determine authorisation of land use for certain development applications should have appropriate skills and have professional</p>

	Content of Land Use Schemes		<p>registration.</p> <p>A reference to health and safety legislation should be made as a requirement for land use schemes, in particular a provision should be made under Section 24(2).</p> <p>Food security to be included as clause 25 (1)(e) as one of factors to be promoted when use and development of land is determined.</p>
	<p>Agricultural Land</p> <p>Subdivision of Agriculture land</p>	<p>Agriculture is of national and provincial competence and therefore may not be dealt with by municipal planning.</p> <p>Subdivision of agricultural land is done through the Administration of Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), which confers powers to make determination on agricultural land to the Minister of Agriculture, Forestry and Fisheries.</p>	<p>The Minister of Agriculture, Forestry and Fisheries should be consulted on all decisions relating to productive agricultural land.</p> <p>Prime and unique agricultural land should not be subdivided.</p>
6	Municipal Planning Tribunals	<p>The exclusion of municipal councillors to be members of the Tribunal means that the Bill contradict the Municipal Systems Act (s.79 & 80), which makes provision for the Tribunal to consist of political representatives or councillors. Also in terms of section 160 (1) (a) of Constitution it is the prerogative of municipalities to decide who should be in the Tribunal.</p> <p>The Tribunal system is expensive and some municipalities might not have persons from private sector to serve on the tribunal.</p>	<p>It should be discretionary not mandatory for the municipality to appoint outside members to the Municipal Planning Tribunal as this will have cost implication for the municipality.</p> <p>The Bill must be amended to give municipalities a choice to have the power of deciding on land use application with municipality's specific portfolio committee or if they wish to have a municipal planning tribunal.</p> <p>Tribunals should deal only with appeals while Municipal Council should deal with applications</p>

		The format proposed in the Bill gives greater decision making power to private sector due to its ratio.	Non-state members should outweigh municipal officials in municipal planning tribunals.
6	Timeframes for applications (clause 44)	There are no timeframes in the Bill to deal with applications.	There should be timeframes for applications. There should be consequences for not keeping timeframes. A decision to be made within 3 months (90 days) of receipt application by delegated Municipal Official and within 5 months (150 days) of receipt of application by Municipal Planning Tribunal. Time frames for deciding on application should not be regulated instead should depend on the circumstances for approval
6	Engineering Services/Development Charges (Clause 49)	Definition of engineering services does not include private roads The use of "fair and reasonable costs" in section 49(4) is likely to create unnecessary complications as no guidance is given of how one arrives at fair and reasonable costs. This impact on what municipality can get from development charges.	Definition engineering services need to be expanded. Provision on development charges need to be discussed with Treasury.
6	Appeals (clause 51)	The Bill provides only for internal appeal process to the Municipal Executive Authority. Since decision of Municipal Planning Tribunal is a decision of municipality it means an appeal to executive authority of municipality it becomes an appeal to the same body which made the decision (the municipality becomes both the player and referee). It is too much administrative burden on 'executive authority' to deal with appeals for the whole jurisdiction of municipality.	Inter-municipal appeal tribunal consisting of officials from different Councils. Provincial Planning Appeal to decide on all appeals. Independent tribunal of persons with qualifications in professions like planning, engineering, land surveying, environment management and law.

		<p>Appeal process legislated through section 62 of MSA creates dual appeal process that will cause confusion and delays.</p> <p>No right of appeal unless appellant can prove a right that has been adversely affected (clause 55(5)).</p> <p>The Bill gives right to appeal to decision taken by Tribunals but it says "no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision (clause 51(3)). This is undermining the right to appeal</p> <p>There is no provision made for appeal against the decision by municipality to adopt scheme or amend a scheme.</p>	<p>It should be left in the discretion of municipalities to decide on the format of appeals.</p> <p>The provision should be deleted</p>
6	National and Provincial planning/ interest	The Bill does not adequately define or provide guidance on the nature, scale or intensity of elements that may be considered as part of provincial planning/interest or national interest.	
7	Exemptions (clause 55)		<p>Tenure upgrades or process to obtain title to existing tenure rights should be exempted from provisions of the Bill.</p> <p>Land use for essential services should be exempted from the Bill.</p> <p>Services that are offered by state-owned enterprises should be listed as of national interest and therefore exempted from the legislation.</p>

7	Regulations (clause 54)	<p>An opportunity should be given to comment on the proposed regulations to be made by the Minister.</p> <p>Regulations should have been made available in parallel with the Bill</p>	
7	Transitional Arrangements (clause 60)	<p>Chapter V and VI of the DFA have been declared unconstitutional</p> <p>The Bill has no clear arrangements put in place to deal with development applications that were submitted in terms of DFA and were not finalised by 18 June 2012</p> <p>Transitional arrangements provided with regard to dealing with existing property rights shall create claims against the local authority.</p>	<p>Any regulations pertaining to chapter V and VI of the DFA should be deleted.</p> <p>A provision, which states that DFA applications that were approved prior to 17 June 2012 be dealt with and finalised in terms of SPLUMB should be incorporated.</p> <p>Existing rights should be dealt in the same manner as in the Town Planning and Township Ordinances, 15 of 1998 in which rights will remain in place for a period of 15 years.</p> <p>An adequate transition period of two years is required to ensure that all process or requirements completed before the Act become implementable</p>
Schedule 3	Repeals	<p>Since the provision for removal of restrictions in the Bill is not adequate, consideration should be given as to whether the Removal of Restrictions Act, should be repealed simultaneously with enactment of Bill, or at all.</p> <p>The Bill does not repeal old provincial apartheid legislation and therefore creates parallel process. The Less Formal Township Establishment Act (Act 70 of 1970) and the Black Community Development Act are not repealed.</p>	Identify all pieces of legislation that are currently used to regulate development planning

APPENDIX

Definitions

Some of the terms used in the Bill are not defined and some of those defined are not used in the Bill and others need to be clarified. These include:

Not defined

- Spatial planning
- Sustainable development
- Sustainable human settlement
- Public interest
- National land use policies/priorities
- Zoning schemes
- Land use management
- Prime and unique agricultural land

Defined but not used

- Inclusionary housing

Need more clarity

- Engineering services (internal and external)
- Land use schemes
- National interest
- Provincial interest
- Provincial planning
- Open space
- Region

