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South African Local Government Association

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Date: 24 May 2013

Hon AND Qikani
The Chairperson of the Select Committee
on Land and Environmental Affairs
Parliament of the Republic of South Africa

COMMENTS ON THE SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, DURING THE PROVINCIAL HEARINGS

SALGA welcomes the opportunity to make further representations on the Bill during the National Council of Provinces public provincial hearings and would like to highlight key issues that are not adequately addressed in the Bill. We would like to indicate that the Bill that was tabled during the provincial hearings represents an improved version that has responded to some of the key issues that were raised by SALGA during the previous rounds of consultation. However, there are some outstanding key issues that SALGA previously raised in response to the Bill (which must NOT be construed as substituting comments that were submitted directly by individual municipalities) that need to be addressed before the Bill can be passed.

ISSUE	COMMENT
1. **Roles and responsibilities of each sphere of government, matters to be addressed by Provincial legislation and definition of National and Provincial interests.**	• SALGA previously requested the definitions of Provincial and National Planning interests to be incorporated into the Bill and for the "triggers" of such interests to be articulated. Substantial changes that seek to clarify the roles and responsibility of each sphere of government have been introduced in the latest version of the Bill. However, the Bill does not define what constitutes provincial/national interests. Section 10 (4) of the Bill leaves the issue of provincial interest to the Premier without providing guidance. • Whilst the impact of the lack of definition of National and Provincial interests is not as significant as was the case in the previous

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	versions of the Bill, given the amendments that were effected in the Bill on matters requiring national and or provincial interventions, there is still a need for the Bill to give guidance in order to achieve consistency across provinces.
2. **Section 7(a)vi states that a Municipal Planning Tribunal considering an application before it, may not be impeded or restricted in the exercise of its discretion solely on the ground that the value of land or property is affected by the outcome of the application.**	• Notwithstanding SALGA's previous input on this matter the current version of the SPLUMB has not addressed the concerns that were raised by SALGA. – Section 7 (1)(b) (ii) of the National Building Regulations and Building Standards Act no 103 of 1977 does not permit a building plan to be approved if the Municipality is of the opinion that the building may derogate from the value of neighbouring properties. It is possible that notwithstanding the intentions of the Bill, Section 7 of NBR in actual fact brings the issue of derogation of property values to the core of consideration of building plan approvals that may be needed post land use approvals. An application for change in land use that may not result in the physical erection of a structure may still require building plan approval. – There is potential for the creation of uncertainty between the decision criteria of the SPLUMB and the NBR, especially where land use permissions are granted and tied to specific sketch plans that require the erection of new structures
3. **Municipal Differentiation (Section 11)**	• The Bill has provided some guidance on the criteria to be taken into account when national and provincial spheres are performing their monitoring and support functions. • When provincial legislation is developed, the question of differentiation should be cascaded down to the spatial planning level in order for provincial/district and local spatial plans to play a different role and also have different content, given the level of each framework.
4. **Section 27 (1) of the Bill states that "A municipality may review its land use scheme in order to achieve consistency with the municipal spatial development**	• The possible impact of this matter was previously raised by SALGA, but has not been addressed in the Bill. • Whilst it is important to align land use

framework, and must do so at least every five years.	schemes to SDFs, the review of land use schemes every 5 years may be too tedious and impractical for municipalities. A period longer than 5 years may be necessary given the time and resource constraints associated with land use schemes. Land use rights reside in the land use scheme and a 5 year review does not create adequate certainty in land use rights. A review every 10 years is recommended.
5. **Section 32(8) states that an inspection of a private dwelling may only be carried out by an inspector when authorized in terms of a warrant issued by a competent court.**	• Land use contraventions that tend to impact negatively on residents usually take place in residential areas. The requirement for inspectors to first obtain a warrant from the court before undertaking an inspection of a private dwelling may create problems for municipalities especially where such a court warrant takes unreasonably long time to obtain. It is not clear whether the implications of this requirement have been carefully considered. Furthermore, when a private dwelling is being used illegally for business purposes, does the inspector require a court warrant or does he treats the property as a business premise? The requirement for a court warrant must be removed as it adds to unnecessary bureaucracy.
6. **Composition of Municipal Tribunals (Section 36)(2)** • **SALGA previously raised this matter and submitted that the composition of Municipal Tribunals should be left for the determination of the municipality as provided for in the Constitution and the MSA.**	• The prescription on the composition of Municipal Planning Tribunal and the automatic exclusion of councilors as per section 36(2) of the Bill is in conflict with section 79 of the Municipal Structures Act (MSA). The MSA makes provisions for municipal council to determine how matters falling under their functional competencies must be dealt with. There is no clarity as to whether the SPLUMB is intended to operate in tandem with the conflicting sections of the MSA with regard to the composition of municipal planning tribunals or whether certain sections of the MSA will be amended. • Furthermore, in terms of section 160 (1)(a), of the Constitution, a municipal Council is empowered to make decisions concerning the exercise of all its powers (including municipal planning) and the performance of all the functions of a

	municipality. The prescription on how a municipality must set up a planning tribunal may therefore be in conflict with both section 160 of the Constitution and section 79 of the MSA. The inclusion on the Municipal Tribunals of people who are not in the employment of the municipality was previously opposed by municipalities that had bad experiences with the Tribunals that were set up in terms of the DFA.
7. **Section 43(2) states that "a conditional approval of an application lapses if a condition is not complied within a period of five years from the date of such approval, if no period for compliance is specified in such approval"**	• This issue has come to the attention of SALGA for the first time and no previous comment was made. • There are serious practical implications to this clause especially when it involves say a rezoning application and the condition that has not been complied with relates to say parking provision. Does the zoning lapse back to the previous zone and if so what happens to the structures that were erected in pursuance of the permission that was granted? Failure to comply with conditions of approvals should rather be dealt with as contraventions without invoking the lapsing provision.
8. **Change with approval of Municipal Planning Tribunal (Section 41).The list of land development applications does not include temporary use of land**	• The types of land development applications listed in this section should also include the use of land for a temporary period as determined by the Municipal Tribunal, that is a temporary departure from the land use scheme. Such an approach will facilitate the multi-use of land without going through the tedious process of rezoning or applying for conditional use.
9. **Intergovernmental Support and Municipal Capacity**	• There is a need to make a distinction between intergovernmental support directed at municipalities that are unable to meet the requirements of the new legislation and the resolution of conflict. Furthermore, there must be clear provisions that deal with failure of the provincial sphere to provide the necessary support to municipalities after municipalities have made request for such support. • There are no innovative ways to deal

	with the capacity challenges being faced by some municipalities. The problem of capacity and piecemeal 'support" provided to municipalities by both national and provincial spheres of government is likely to continue. The challenge of capacity is not only inherent to municipalities, but it also affects some Provinces. It is therefore unclear as to how the under-capacitated Provinces will be able to support under-capacitated municipalities.
10. Spatial Development Framework	• There is a need to clearly define the triggers for national and provincial planning. Regional SDF's in both National and Provincial legislation, is this a concurrent competency or not? No indication of how this will be governed or institutionalised in SPLUMB. • Definition of "region" is problematic. • Need for clarity on roles of the different spheres SDF's. • Districts and local municipalities' SDF's should be distinguished. • Current description of municipal SDF's is too prescriptive in SPLUMB.
11. IGR alignment in decision making	• Need for clarity on how national and provincial interests will be integrated into municipal plans and how a potential need for separate decisions on the same application will be handled.
12. Intergovernmental support and municipal capacity	• There is need for innovative ways to deal with municipal capacity challenges especially for small rural municipalities. • Support from both provincial and national spheres of government may be necessary especially for smaller rural municipalities. • Should be clearly outlined how municipalities will be supported in implementing the Act.
13. Cost Implications for municipalities in many provisions of legislation	• Use of registered planners - this is regulated in terms of the Planning Profession Act of 2002 and will hopefully improve the quality of land development applications. • Cost of 5 - year review and associated procedures (SPLUMB). • Section 51 (6) Cost of municipal appeal tribunal- option to be shared across municipalities districts. • Section 32 (8) Cost of Enforcement and existing pressure on Justice System.

	• Assessment of municipal capacity and cost of compliance to new legislation should be conducted and should form part of the determination of support that municipalities would require.
14. Areas falling under traditional leadership	• The Bill needs to make reference to the need to consult traditional leaders where the land in question falls in areas under traditional authorities". Such an approach will make it clear that traditional leaders are a stakeholder that requires consultation and not a decision making authority on matters dealing with municipal planning

CONCLUSION

Whilst there have been positive amendments incorporated in the Bill, such as the removal of provincial appeals, an attempt to give effect to the DFA Constitutional court ruling on certain matters related to municipal planning, and an acknowledgment for the need for differentiation when developing provincial legislation, the abovementioned matters will undermine the intentions of the Bill if they are not satisfactorily addressed.

There can be little doubt that local government sector is the key site of delivery and development and is central to the entire transformation project of the new South Africa, which underscores the need to deal with matters raised by the very seriously.

Yours sincerely,

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