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Summary table

SUMMARY OF PUBLIC SUBMISSIONS TO THE PORTCOM ON THE LAND USE MANAGEMENT BILL (JULY 2008)

STAKEHOLDERS	Summary of Comments
City of Johannesburg	<ul style="list-style-type: none"> • Definition of "application" does not include the removal, amendment or suspension of restrictive conditions. • Definition of "piece of land" not sufficient. • Definition of "restrictive condition" should draw distinction between "restrictions" and "obligations". • Suggested that the heading of clause 5 be changed to "compulsory norms and standards". • Supports officials constituting the Municipal Land Use Committee & suggests that the Committee be headed by a legally qualified person. • Appointment of the members of the Municipal Land Use Committee by the Executive Council of the Municipality may not be practicable. A more flexible method, in the light of staff changes, is proposed. • The term of 3 years for the Municipal Land Use Committee is problematic. • Chapter 3, Part 2 heading be changed from "Provincial Land Use Tribunals" to "Provincial Tribunals". • Clause 32 may be problematic in respect of pieces of land that are de-proclaimed mining land because of schedule 1. • Synchronise the heading of clauses 27 & 33 with what is in the <i>arrangement of the Act</i>. • The provision in respect of compensation for removal of restrictions may not be desirable as unlimited compensation may be awarded. • Proposed that further reference be made in clause 35(2)(a) to section 24 of the Constitution. • Add in clause 37(2)(ii)(aa) "environment" after "health". • Perhaps a definition of "undue delay" is desirable.
Office of the Premier Western Cape	<ul style="list-style-type: none"> • Bill underplays role played by Province in land use management, bypasses the province to deal directly with the municipalities. • Long standing and accepted principles altered by the Bill, uses Gauteng-based terminologies & concepts. • Bill does not address forward planning. • Bill should provide for province's approval of municipal land use schemes. • Bill micro-manages as opposed to providing principles. • Subject matter of the Bill does not in reality fall within ss 146 & 44(2) of the Constitution. • Unconstitutional interference in provincial mandate • No support for the use of "tribunals" as in the land use regulator for the province. • Decision making should remain with elected officials and not appointed officials.
Community Law Centre University of the Western Cape	<ul style="list-style-type: none"> • There is confusion of roles among different spheres of Government. • This confusion is driven by (a) overlap between the constitutional functions of Municipalities & Provinces; & (b) overlap between municipalities' exercise of "municipal planning" and national & provincial supervision of same. • Land use function not specifically identified in the Constitution. • Bill should provide definitions for planning and land use management related functions in schedules 4 & 5

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	<p>in order to clarify the confusion regarding the allocation of powers between different spheres of government. Suggested that the definition of "municipal planning" by the Municipal Demarcation Board be adopted.</p> <ul style="list-style-type: none"> • Bill should clarify the allocation of powers to District and Local municipalities within the "Municipal Planning" function consistent with section 84 of the Municipal Structures Act. • Designation of matters of provincial interests in terms of clause 37 and the jurisdiction granted to tribunals in clause 36 may be unconstitutional intrusion by the Provinces into municipal planning. • Designation of matters of national interests in terms of clauses 37 & 38 and the jurisdiction of the Minister may be unconstitutional intrusion by the National sphere into municipal planning. • What amounts to national & provincial interests are very vague (NSDP & PGDS not legally defined or authorised). • Making land use schemes subject to the NSDP, PGDS and other National & Provincial Policies are problematic. Clause 51(2) oversteps the boundaries of national & provincial supervisory powers over municipalities as granted in section 155(7) of the Constitution. • Clause 73 oversteps the power of intervention provided to national government in section 139(7) of the Constitution. • Section 78(4) enabling municipalities without requisite capacity to transfer to the tribunals their land use applications determination function oversteps the constitutional support function of national and provincial spheres.
FW De Klerk Centre for Constitutional Rights	<ul style="list-style-type: none"> • Objects of the Bill should be broadened to include balancing socio-economic needs with environmental needs. • Clause 4(2) should be amended to allow for reconciling land reform with environmental conservation. • Clause 5 should be amended to enable the Minister, in the determination of norms and standards, to act in conjunction with other Ministers (Trade & Industry, Finance, Water Affairs & Forestry, Minerals & Energy, Environmental Affairs & Tourism). • Change of use relating to agricultural land must be in consultation with the Department of Agriculture.
Urban LandMark	<ul style="list-style-type: none"> • Bill worsens the uncertainty over executive and legislative powers. • Bill contains nothing to enable any sphere address apartheid spatial settlement patterns. • Bill introduces more complexities than the DFA. • It is suggested that the Bill introduces: <ul style="list-style-type: none"> (a) Clear guidance to each sphere's responsibilities; (b) Clear path to repealing apartheid era laws; (c) Efficient relationship with other planning & environmental laws; and (d) Mechanised for expedited procedures.
South African National Biodiversity Institute	<ul style="list-style-type: none"> • Broadly supportive of the Bill. • Suggests that clause 37(b)(ii)(aa) includes <i>environmental</i> after "economic,".

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<p>South African Planning Institute</p>	<ul style="list-style-type: none"> • There is a fragmentation of planning functions in government. • Bill is based on the notion of “tiers” and not “spheres” of Government. • DPLG already regulating IDPs, SDFs and LUMSs as part of a continuum. • Bill removes powers from elected officials. • Bill does not provide guidance on the sustainable utilisation of land as a resource. Does not recognise the difference between land use management and strategic spatial planning. • Bill does not recognise its impact on diverse pieces of legislation such as the NEMA, Heritage Resources Act, and the Water Services Act, thus promotes parallel systems. • Bill confuses roles by enabling District Municipalities to have land use schemes. • Bill does not repeal the apartheid-era planning laws and other post-apartheid laws with land use implications. • Bill does not provide direction to provinces especially on the repeal of provincial ordinances. • It is suggested that: <ul style="list-style-type: none"> ○ A National Spatial Planning law be introduced; ○ Spatial categories of land be instituted in accordance with the “Current distribution of powers and functions and impact of devolution to local government” document (dplg, 2005); ○ Principle of devolution be adhered to; ○ The National Treasury study on rationalisation of the planning regulatory system be implemented regarding a complete overhaul of the Bill; and ○ The country needs Planning & Development legislation, not a land use management law.
<p>South African Geomatics Institute</p>	<ul style="list-style-type: none"> • Lack of participation/consultation with the surveying, engineering & architectural professions • Members of the public should be allowed to put forward names of members of the Municipal Land Use Committees • What will happen to Ordinance 15 of 1985 (why not repealed alongside other laws)?
<p>City of Cape Town</p>	<ul style="list-style-type: none"> • Lack of participation/consultation with Local Government (i.t.o section 154 of the Constitution). • Constitutional concern on possible encroachment by National Sphere in Municipal Planning. • Bill is not really legislation envisaged in section 44(2) of the Constitution. • Bill does not assist in rationalisation. • Bill does not clear define roles of each sphere. • Overlap between land use planning & environmental authorisation not defined. • Bill does not create national spatial planning framework as promised by the White Paper. • Bill does not provide for “facilitation”, it deals only with regulation & control. • Bill does not deal with accelerated developments; does not bind the State. • AD clause 7: reliance should be place on the IGR Framework Act. • Creates a extra burden of compensation than section 25 of the Constitution.

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	<ul style="list-style-type: none"> • Province need not consider applications beyond municipal boundaries, rather it should be done by the municipalities in accordance with the IGR Framework Act. • National & Provincial Interests applications are too broad and vague. • AD clause 44(2): the promise of the White Paper on streamlining NEMA and land use planning not adhered to.
Department of Finance and Economic Affairs Department of Gauteng	<ul style="list-style-type: none"> • Bill needs greater clarity and less ambiguity on what it intends to regulate. • Bill could better strengthen cooperative governance. • Some contentious provisions may be difficult to legally defend. • Bill requires better alignment with other laws • Greater innovation and progressiveness is required (Bill should build on previous research done, e.g. by the Development & Planning Commission).
Institute for Constitutional and Labour Law Studies	<ul style="list-style-type: none"> • Bill does not adequately describe words such as "public interest", "imbalances of the past", "balanced economic development". • Bill is not such legislation envisaged in section 44(2) of the Constitution. • Clause 5 is an intrusion into powers of other spheres.
South African Constitutional and Property Rights Foundation	<ul style="list-style-type: none"> • Bill will not achieve its objectives unless the entry cost to unused and unimproved [raw] land is eliminated and replaced with annual user charges like rates and taxes.
PE Claasen	<ul style="list-style-type: none"> • Need for efficient relationship with other planning & environmental laws which is lacking in the Bill. • Bill does not repeal the apartheid-era planning laws and other post-apartheid laws with land use implications. • Bill may not be wholly applicable to the Western Cape.
Francois Theunissen	<ul style="list-style-type: none"> • Inputs offered not factored into the Bill. • Long standing and accepted principles altered by the Bill, uses Gauteng-based terminologies & concepts. • Decision making should remain with elected officials and not appointed officials. • Unconstitutional encroachment on provincial powers. • No forward planning chapter in the Bill and There are many essential zoning and subdivision concepts and measures missing from LUMB, for example, among others – <ul style="list-style-type: none"> (a) lapsing of upgradings of land use rights if not utilised; (b) compensation/betterment; (c) establishment of the principle of subdivision before actual subdivision; (d) the cadastral linkage and confirmation of subdivision approvals; (e) basis of evaluation, and (f) contravention rectification.

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	<ul style="list-style-type: none"> • Bill is based on the notion of “tiers” and not “spheres” of Government. • Subject matter of the Bill does not in reality fall within ss 146 & 44(2) of the Constitution. • Bill proceeds from the incorrect believe in need for national “standardisation”.
AgriSA [see e-copy]	<ul style="list-style-type: none"> • Bill should be aligned with the Sustainable Utilisation and Protection of Agricultural Resources (SUPAR) Bill. • Protection and management of agricultural land must remain with Department of Agriculture and not with land use regulators as suggested by the Bill. • Definition of “land development” is broad and vague. • Objects of the Bill should include <i>rural development, economic growth, the protection of natural resources and the maintenance of food production.</i> • There should be consultation on Minister’s determination of norms and standards. • There is concern around the expertise and capacity of municipalities to fulfil the envisaged functions as municipal land use regulators. • To what detail and extent with the land use schemes prescribe land use (see clause 32). • Conservation of Agricultural Resources Act should be introduced in Clause 53(1)(d).
CONTRALESA	