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Summary pdf

LAND USE MANAGEMENT BILL [B27 – 2008] SUMMARY OF PUBLIC HEARINGS SUBMISSIONS (12 August 2008)

Stakeholder	Summary of Comments	
SALGA	<ul style="list-style-type: none">• Challenges noted (i) Fragmented unequal and incoherent spatial planning & LUM; (ii) parallel and multiple incoherent legislative framework; & (ii) lack of clarity of roles amongst spheres. The Directive Principles, Norms & Standards, vertical & horizontal alignment of inter-sphere concerns, further provincial legislation, cross-reference to the IGR Framework Act, will do all these.• Notes the objectives of the Bill. The Bill has not responded well to its stated objectives except one on the establishment of LUR The Directive Principles, Norms & Standards, vertical & horizontal alignment of inter-sphere concerns, further provincial legislation, cross-reference to the IGR Framework Act, will do all these.• SALGA interested in how the Presidency & DPLG concerns were addressed These concerns were: (i) Failure to link the broader strategic and development aspects to the issues of land use management; (ii) Failure to adequately/satisfactorily address the complexity of the planning system including the sector-focussed regulatory and approval system; (iii) Preference for the regulation of land use management within a single integrated national development planning legislation; and (iv) Preference for the provincial and national spheres to have no major role in land use application decision making including appeal processes. We successfully dealt with these concerns.• The Consultation process lists SALGA as having been consulted. There has been inadequate consultation on this Bill. Opportunity for meaningful consultation and engagement with SALGA lost. SALGA would have preferred involvement at the policy and legislation development stage as opposed to the opportunity to consult on a product. Section 154(2) of the Constitution mandates consultation with organized local government. The Legal Opinion sought and received by the Portfolio Committee deals with this. We must however recall that (i) the Bill is currently being piloted in 2 Provinces and consultations were held with all the municipalities in those provinces; (ii) Our extensive interactions with DPLG was to ensure that the interests of municipalities are brought on board; (iii) the Bill was at many times presented to the National and Provincial Development Forums which is made up of relevant National departments the Provinces and municipalities.]• The IGR Framework Act guides us on what to do in this respect especially interactions with	

	<p>other spheres.</p> <p>The Department will propose amendments to strengthen the linkages and references to the IGR Framework Act</p> <ul style="list-style-type: none"> • SALGA wishes that the opportunity to engage with the Department on this Bill should be allowed either during the PortCom Process or after. <p>The Department will be guided by the Portfolio Committee</p> <ul style="list-style-type: none"> • Areas of concern include: <ul style="list-style-type: none"> ○ As the coordinating piece of legislation, the Bill does not address any of the land use planning frameworks. It is suggested that new legislation that will rationalize the existing fragmentation and coordination across the spheres <p>The key national legislation on land use are proposed for repeal while the Provinces will repeal provincial legislation & further align subsisting legislation to consistency with the Land Use Management Bill;</p> ○ Despite interlink with IDPs, SDFs and LUM strong focus on the latter <p>While the sentiments expressed are understood, the Bill will exist together with and in full harmony with the legislation on IDP – the Systems Act. The reference in the Systems Act to DFA will now be read to mean the Land Use Management Act once this law is passed</p> ○ Development of norms and standards & regulations without adequate consultation. Suggested that specific provision for consultation with affected parties <p>Norms & Standards and Regulations will certainly be published for comments before promulgation. We can check the Bill to strengthen the need for consultation.</p> ○ Development of own LU schemes by DMs problematic <p>We admit –the intention is not to make DMs to do Land Use Schemes. Proposed amendment will deal with this to ensure that only Metropolitan and Local Municipalities do Land Use Schemes;</p> ○ Constitutionality of certain provisions of the Bill encroaching on the local sphere <p>We believe that a careful balance – consistent with the Constitution- has been maintained in the Act. The Department will propose amendments to strengthen the linkages and references to the IGR Framework Act</p> 	
LRC	<ul style="list-style-type: none"> • Main submission is that to undo the planning mess there is need for continued discussions and negotiations across the spheres. Unfortunately the Bill does not deal well with this required negotiation. <p>The Department will propose amendments to strengthen the linkages and references to the IGR Framework Act which mandates negotiation among spheres</p>	

	<ul style="list-style-type: none"> • The section 25(5) mandates fostering access conditions. The Bill must place as central the issue of land audit and rapid land release. Clause 5(2)(b)(iv), directive principles, norms & standards, and further regulations to be developed will enable this. • The Bill repeals the DFA which is about RDP – the Constitution enjoins us to do social justice and RDP. We need legislation to help us achieve this. The directive principles, norms & standards, and further regulations to be developed will enable this • The Bill is now not just about LUM but includes Development, as such the title should reflect this. It is important to reflect development. We are of the view that the current title of the Bill is sufficient and not necessary to include Development. • Fragmentation, inequality and incoherence may be perpetuated by this Bill. The Directive Principles, Norms & Standards, vertical & horizontal alignment of inter-sphere concerns, further provincial legislation, cross-reference to the IGR Framework Act, will do all these. • LUMB duplicates some of the regulations in existence at the moments (MSA) The key areas suggesting duplication is the reference in the Systems Act Regulations to the details of what should be in the Spatial Development Frameworks. The Systems Act recognizes the role of the Department of Land Affairs in regulating the full contents of the SDFs. The predecessor of the SDF is the LDO. • Need for rationalisation and alignment across three spheres The key national legislation on land use are proposed for repeal while the Provinces will repeal provincial legislation & further align subsisting legislation to consistency with the Land Use Management Bill • Municipal capacity and the instruction to prepare and adopt land use schemes is not feasible. Chapter 2 of the Bill enjoins both the National and Provincial spheres to support, assist, capacitate and monitor the municipalities in the implementation of this Bill • The repeal of DFA and DPC. Bring back the DPC and some of its functions especially its work on the rationalization of laws A number of the functions of the DPC are no longer relevant. Within the current Bill, the Minister may refer matters to the National Land Use Commission including rationalization of laws 	
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	<ul style="list-style-type: none"> • The Bill should deal with the indiscriminate disposal of land by municipalities and measures aimed at rapid release of land Amendments are to be proposed the Department to deal with formalization/regularization of informal settlements, and to deal with expedited procedures for human settlement. • Alignment of legislative and executive functions to do RDP The Directive Principles, Norms & Standards, vertical & horizontal alignment of inter-sphere concerns, further provincial legislation, cross-reference to the IGR Framework Act, will do all these. • The Constitutionality of LUMB may be an issue. Supports the views of UWC Community Law Centre The Legal Opinion sought and received by the Portfolio Committee deals with this, as well as previous explanations by the Department. • Strategically located land, Land Audits, and other tools must be further fleshed out Clause 5(2)(b)(iv), directive principles, norms & standards, and further regulations to be developed will enable this • Public Participation in decision making must be strengthened to ensure the rights of the communities to engage must be recognized and given effect to Norms & Standards and Regulations will certainly be published for comments before promulgation. We can check the Bill to strengthen the need for consultation. • AD Clause 39: (i) who can make application for land use change; (ii) will notice to affected communities be effective. • How do we align the EIA processes with those proposed in the Bill? 	
CGE	<ul style="list-style-type: none"> • Land use management policies must expand the principle of equity to expressly include gender equity & Gender equity should be factored into the Bill. • Definition of Land should include land owned by the 3 spheres especially to include the Municipal-owned land This Bill is not the required place to do this. The matter relates more to ownership and disposal of land, not use. • No clear definition of powers of the 3 spheres. Recommended that the Bill should enumerate definitions for the planning and land use management related functions that are listed in Schedules 4 and 5 in order to prevent any confusion in the exercise of their powers and functions. We believe that a careful balance – consistent with the Constitution- has been maintained in the Act. The Department will propose amendments to strengthen 	

	<p>the linkages and references to the IGR Framework Act</p> <ul style="list-style-type: none"> • Zoning must be separated from a Planning scheme. • Recommends that the Bill should enumerate definitions for the planning and land use management related functions that are listed in Schedules 4 and 5. We believe that a careful balance – consistent with the Constitution- has been maintained in the Act. The Department will propose amendments to strengthen the linkages and references to the IGR Framework Act. We need not embark on an exercise that goes beyond regulating land use management • On national support and monitoring, it is recommended that Section 6 of the Bill be expanded to outline the envisaged mechanisms that are supposed to ensure compliance by municipalities. • Provincial mechanisms to strengthen capacity at local government level should be clearly outlined or more clear guidelines be established in order to provide certainty and uniformity across the provinces. As a framework legislation, and in order to give room for provinces to define matters of provincial interest, the Bill is not too prescriptive. Further provincial legislation and regulations will deal with this. • There is inability of the bill to speak on the powers and functions of the Municipal Land Use Committee. This is certain to cause confusion and lead to dysfunction committees. Municipal land use committees are land use regulators and the Bill in Part 3 of Chapter 3 as well as Chapter 5 adequately deal with this concern. • We should have a nomination process in the appointment of members of the MLUC Because of extensive disparate in sizes and capacities amongst the municipalities, it may not be feasible to impose a blanket requirement of public nomination in the composition of the Municipal Land Use Committee. The Bill contains enough provisions on ensuring that decisions are participatory and democratic. • The clause 19 cooperation process must include a public participation and consultation before its operation. We do not consider it really necessary to impose extra consultative requirement on this process as the decision to work together will in any event be taken within the spirit of the IGR Framework Act, and the decisions may not really have an external legal effect. We can check the Bill to strengthen the need for consultation • Tribunals should receive administrative and other support from the Department of Agriculture and Land Affairs. 	
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	<p>The Premiers are better suited to determine the manner and form of administrative and other support to be offered to the municipalities.</p> <ul style="list-style-type: none"> In section 35 restrictions allowing for the Land Use Regulator not to pay for any loss whatsoever when considering an application to remove, amend or suspend a restrictive condition is unconstitutional. <p>The Department will propose that sub-clauses (2), (3) & (4) of clause 35 is removed to deal with this concern.</p>
<p>Legal Opinion 03 P.L.A</p>	<p>The purpose is to provide a framework for Land Use May qualify for land use flowing through SA.</p>