

The South African  
Council *for* Planners  
**S A C P L A N**

# SOUTH AFRICAN COUNCIL FOR PLANNERS

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Our Reference : SPLUMB  
Your Reference :

10 August 2012

The Portfolio Committee on Rural Development and Land Reform  
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## **COMMENTS: SPATIAL PLANNING AND LAND USE MANAGEMENT BILL [B14-2012]**

The invitation to interested people and stakeholders to submit written comments on the Spatial Planning and Land Use Management Bill [B 14-2012], has reference.

These comments are divided in two parts. The first part addresses a general comment relating to "Cross Sectoral Legislation" and the second part addresses more detailed comments.

- **Cross Sectoral Legislation**

This opportunity must also be used to put in place an Act that will address transformation as was envisaged within the Reconstruction and Development Programme. It is a well-known fact, and many authors have addressed the fact, that South Africa has a prolifery of Legislation impacting on and / or regulating the use of land. With the National Planning Commission being able to address issues on a cross cutting / cross sectoral basis, this act should be doing the same. Within the preamble of the Spatial Planning and Land Use Management Bill reference is made of this "... duplication ...".

Further within the Preamble it is stated that "... Whereas the continued existence and operation of multiple laws at national and provincial spheres of government ..." the Spatial Planning and Land Use Management Bill is enacted. It would thus seem appropriate to "amalgamate" processes and procedures relating to / relevant to land development not only within one sector, but across sectoral lines. There shouldn't be different legislation addressing the same space when it comes to the use of land. The example here that has come strongly to the fore is the difference between planning legislation (DFA) and environmental legislation (NEMA). It has then happened at a number of tribunal meetings where members of the public that responded

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to the Environmental processes were “kept out of / excluded” from the planning process as they did not respond and / or comment in the same manner. According to the community these two processes were one and the same process, just to be reminded / confronted at a planning tribunal that they do not have standing or a say due to them not responding to the correct advertisement. The community should therefore not be placed in a situation where they could be “mislead” by dual legislative processes.

It is for this reason that Planning legislation, environmental legislation, and for that matter any other legislation that address/affect the use of land, should be incorporated into one piece of legislation. There are a number of international examples where this has been done e.g. the Resource Management Act, 1991 of New Zealand where the Assessment of Environmental Effects (AEE) forms part of the Resource Consent application process.

- **Development and Planning Commissions**

An aspect that has been left out of the Spatial Planning and Land Use Management Bill is the establishment of “Development and Planning Commissions”. The functioning and establishment of the National Planning Commission have been set. There is however a need for Development and Planning Commissions on a provincial level that would firstly advise provincial government on policy and laws concerning land development and secondly such Provincial Development and Planning Commissions will be able to advise municipalities (especially municipalities without the necessary capacity) regarding policy and laws. This would fit in with Chapter 3, Section 10 of the Spatial Planning and Land Use Management Bill in respect of Provincial support to such municipalities to meet its Constitutional mandate.

- The Department of Labour is in the process of drafting new “Major Hazard Installation Regulations” as part of the *Occupational Health and Safety Act, No. 85 of 1993*.

To ensure alignment between the Occupational Health and Safety Act, No. 85 of 1993 and specifically the Major Hazard Installation Regulations where it impacts on land use planning, it is important that reference be made within the Spatial Planning and Land Use Management Bill to the Major Hazard Installations (MHI) Regulations. This will ensure that such areas are specifically addressed in the Spatial Development Frameworks as well as within Land Use Management and Land Development Management.

In a similar fashion as reference is made to environmental legislation it is requested that reference be made to health and safety legislation.

The following should therefore be included in Chapter 1 – Introductory Provisions under the Definitions:

- “health and safety legislation” – means legislation as defined in the Occupational Health and Safety Act, No. 85 of 1993, and in particular, the Major Hazard Installation Regulations.

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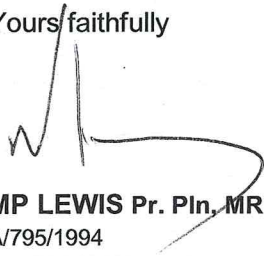
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To further ensure that developers and applicants take into account the relevant health and safety legislation a subsection must be included under Chapter 5 – Land Use Management, Section 24 (2). This subsection should read as follows:

- “include provisions to ensure compliance with health and safety legislation as defined in the Occupational Health and Safety Act No. 85 of 1993, and in particular, the Major Hazard Installation Regulations.”
- Chapter 6 – Land Development Management

Section 35(2) states that “... a municipality may authorise that certain land use and land development applicants may be considered and determined by an official in the employ of the municipality”. It would be important that such a person possess the appropriate competencies and fall professional scrutiny. Such a person will, by implication, require professional registration in terms of the Planning Professions Act, 2002 (Act 36 of 2002)).

Yours faithfully



**MP LEWIS Pr. Pln. MRTPI**

A/795/1994

**CHIEF EXECUTIVE OFFICER**

**REGISTRAR**

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