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The Portfolio Committee on Rural Development and Land Reform
90 Plein Street
Cape Town
8001

Attention: Ms Phumla Nyamza

COMMENTS ON THE SPATIAL PLANNING AND LAND USE MANAGEMENT BILL, 2012 (B14-2012) (herein after referred to as the "Bill" or if enacted the "Act")

VERSIONS OF THE BILL

Please note that the City of Tshwane gave comprehensive comments on the following versions of the Bill:

June 2011;
February 2012; and
April 2012

Some of the comments contained herein are repeated, due to the fact that **the comments, workshop discussions and commitment on amendments on the Bill** have not been taken into account nor have they been incorporated as per the discussions.

This is of major concern to the City of Tshwane and puts into focus whether these comments and workshops were held for purpose of legitimising the process or to solicit input on the practicality and implementability of the Bill.

We also point out that over and above the comments that were provided individually by the different local authorities that **SALGA provided co-ordinated comments** on behalf of local government, which seems not to have been taken into account either.

ATTACHMENTS

ANNEXURE A:	Comments from the City of Tshwane dated 6 June 2011
ANNEXURE B:	Comments from the City of Tshwane to Department Rural development and Land Reform dated 19 April 2012
ANNEXURE C:	Comments from CoT to SALGA dated 19 April 2012
ANNEXURE D:	Comments from SALGA dated 7 June 2012
ANNEXURE E:	Comments per Section and Chapter to be read with the general comments

INTRODUCTION

We reiterate that the comments herein provided are given in view of the litigation and final constitutional judgement on the Development Facilitation Act, 1995 (the "DFA") and **more recently the ending of the period of suspension on the invalidity of Chapters V and VI of the DFA.**

Further, it should be noted that the application by the SAACPP for the extension of the suspension of the period of invalidity was dismissed by the Constitutional Court and access to the Constitutional Court was denied.

It is against the background of this judgement that many of the comments submitted by the City of Tshwane will be given.

The comments provided by SALGA sets out the major concerns on the Bill, **two of which are based on the fact that the Bill can and most probably will be challenged on the basis that it is unconstitutional.**

We will elaborate on these two matters but will simply point them out at this point.

The one is the transitional arrangements dealing with the DFA and the other is interference in the operation of local government by providing such wide power to legislation to provinces.

ADDITIONS AND AMENDMENTS

We note that there are additions made to this version of the Bill and we will comment on these additions in the specific comments attached hereto as Annexure E. However please note that the comments provided on the previous versions are still applicably where these comments were not addressed by the legislature.

The following issues that arise out of the additions and amendments are worth highlighting.

The definition of an "erf" was added to the Bill. In principle we are not opposed the addition of a definition of an erf. However, what is of grave concern is the **incorrect definition of an erf**. An Erf is defined as defined in terms of the Land Survey Act, 1997.

An Erf in terms of the Land Survey Act, is an entity indicated on an approved diagram which indicates that the property was surveyed. This cannot be the basis of an existence of an Erf and is contrary to the definitions and spirit of provisions contained in other legislation dealing with property matters like the Local Government Property Rating Act, the current Ordinances and the Deeds Registry Act, 47 of 1937.

Further, the intention of the legislation should clearly be ensure security of tenure for the **previously disadvantaged citizens**. A legacy of the **"apartheids"** legislation was that so called **"second rate"** ownership was allowed through **leaseholds and deeds of grants** based only on **General Plan** layouts in the so-called "black townships". **Freehold ownership of title was no allowed.**

By adding and amending the definition of an "erf" based **only** on a diagram, it shall make it capable of development without the benefit of ownership.

Please refer to the definition of "land" which in turn refers to an "erf" but in comparison the other types of properties listed under land are registered properties while an "erf" seems only that which is created through the surveying of land. This is going to create endless disputes.

An "erf" **should be defined** as "a cadastral entity registered as an erf, lot, plot or stand or a portion of a lot plot or stand in the office of the Registrar of Deeds."

Section 3

We note the inclusion of the objects of the Act. This may have a noble intention but is very difficult and impractical to implement but we applaud the effort. We have to point out that there are in fact a number of provisions in the Act that are in contravention in our opinion of the objectives like " addressing the imbalances of the past", that from a practical point of view will do the opposite. The definition of an "erf" being a case in point.

We note the other additions and amendment up to and including section 10.

We need to comment the drafters on the inclusion of section 10(2), which caters for the different dynamics within the various provinces, this with the reservation that it shall not allow provinces to interfere in the powers and functions of local government.

Section 26(4)

Again this is an improvement on the previous version in that it covers the possibility that provincial legislation shall not be in place in some of the provinces to deal with land use however, there is one major defect in that in my create the same or similar problems as experienced by the DFA if this is perceived as being a parallel process.

Applicants may in fact "cherry pick" the process in terms of which they apply for land use rights. This may lead to further chaos within the planning arena.

Section 35 (2) and (3)

This section authorises a municipal employee to deal with applications. This is an unnecessary complication in view of the detailed provisions in the MSA with regard to a system of delegations which is also addressed in detail hereunder.

Section 40(9)

It is unfathomable that the Local Authority is to deal with an application without "undue delay" and within a prescribed period without affording some or other indication what this prescribed period will entail and what the consequences of such a delay may be. These provisions cannot simply be accepted by local government on such a vague indication as is contained in the Bill.

The above should be read with 54(1)(e)(ii) & (iii) which states that the Minister shall determine what constitutes undue delay without any reference to the local authority for input in terms of practicality nor what may be the causes of a delay. E.g. in many instances where a delay is purportedly caused by the local authority upon investigation it can and often is determined that the delay is as a result of an applicants' non-compliance with the requirements of the local authority. Incomplete applications or fatally flawed applications are also a major cause of delay in disposing of an application.

OVERALL ISSUES AND GENERAL IMPRESSION

1.1 Levels of administrative and legislative authority

We indicated that it was vitally important that the national legislation set down principles, policies and that the regulation of planning processes makes a clear distinction between the powers, functions and duties of the different levels of government.

We do believe that neither the original version nor the current version has achieved this distinction. The Bill still does not make it clear that municipal planning is within the full control of a local authority.

Ad page 3 of the preamble it is stated that:

"*AND WHEREAS... municipal planning is* ***primarily*** *the executive function of the local sphere of government*; [our emphasis]

We can only reiterate that:

> *"The Constitutional Court found on 18 June 2010[1] inter alia that the executive authority to do "municipal planning" as contained in schedule 4 is not only "primarily" the function of local government but is in fact exclusively the function of local government. The only competency which is conferred upon provincial and national level with regard to "municipal planning" is to draft and prepare framework legislation to deal with "municipal planning".*
>
> *This above principle and distinction should find resonance throughout the bill and should be clarified from the start, before attempting to draft legislation in connection with any municipal planning including Spatial Planning.*
>
> *Section 41(1)(e)-(g) establishes the principles of co-operative government and inter governmental relations, not to assume any functions or powers not conferred on them by the Constitution and not encroach upon the functional integrity of other spheres. This finds implementation in the Intergovernmental Relations Framework Act.*
>
> *In the Supreme Court of Appeal matter of City of Johannesburg v Gauteng Development Tribunal [2] held that Constitution was not framed as to confine the powers conferred upon a municipality to conceiving and preparing plans in the abstract, with no power to implement them. This ruling confirms the importance of executive decision making of land use applications by the municipality itself.*
>
> *The Constitutional Court in its judgement in the application by the City of Johannesburg on 18 June inter alia sanctioned the ruling above and concurred with the Applicant that*

[1] Also hereinafter referred to as the "DFA" matter
[2] (335/08)[2009] ZASCA 106

the powers to rezone land and to approve the establishment of townships are components of "Municipal Planning", a function assigned to municipalities by Section 156(1) of the Constitution

In conclusion conferring powers, functions and duties pertaining to municipal planning on any other level of government, may be found unconstitutional and can make this act reviewable."

1.2 Principles, policies, directives and national norms and standards

Ad page 3 of the preamble it is stated that:

*"**AND WHEREAS** it is necessary that -*

- *a uniform, recognisable and comprehensive system of spatial planning and land use management be established throughout the country to maintain economic unity and equal opportunity or equal access to government services;*
- *the system of spatial planning and land use management promotes social and economic inclusion;*
- *principles, policies, directives and national norms and standards required to achieve important urban, rural, municipal, provincial, regional and national development goals and objectives through spatial planning and land use management be established;*
- *procedures and institutions to facilitate and promote co-operative government and intergovernmental relations in respect of spatial development planning and land use management systems be developed. "*

We reiterate that:

"The current legislative frameworks within which planning decisions are being taken creates a maze of principles, guidelines and policies all of which decision making authorities have to comply with.

A case in point is that the Municipal Systems Act, 2000 (the "MSA") comprehensively prescribes the manner in which local authorities shall draft and implement NOT only its Integrated Development Plan ("IDP") but also its Spatial Development Framework ("SDF") as a component of the IDP's.

It is with anticipation that local authorities awaited the rationalisation of policies, principles and guidelines.

At first blush it appears that it is the intention of the bill to try and simplify and implement uniform policies and principles and guidelines. However, on closer analysis the bill contributes to the chaos of policies, principles and guidelines by the introduction of a further set of guidelines in the form of "norms and standards" to be set by the Minister.

This appears to be over and above the authority granted to make Regulations to the act and in some instances it appears that it may be part of the regulations.

Very few of the existing policies, principles, guidelines in terms of other national and provincial legislation take into account provisions in the respective documents.

Most of these principles, guidelines and policies can be argued from different points of view and it may mean that municipalities will spend a huge amount of time and money in

arguing the clarity thereof, even in extreme cases ending up in litigation. The burden of proving compliance with the principles should be that of the applicant."

1.3 Constitutional dispensation and delegations

We note that the Provincial Tribunal has been removed from the Bill, however the determination of how the Municipal Tribunal is to be established is still contained in the Bill despite our comments on the MSA governing the institutional arrangements. We therefore reiterate our comments.

"Although Chapter 3 of the bill spells out the intergovernmental support to be afforded to municipalities, Chapter 6 negates the principle of support by prescribing under section 33 how municipal planning tribunals are to be established.

There appears to be a lack of understanding of the hierarchy and new constitutional dispensation in which South Africa finds itself, especially with regard to the "wall to wall" municipality concept and the autonomous powers of local government.

The MSA (and the Municipal Structures Act, 117 of 1998)[3], comprehensively governs the establishment and duties of municipalities. It provides for the ***institutional arrangements of municipalities and their decision making structure.***

The Municipal Structures Act, caters for the formation of bodies, committees and the delegations of powers to deal with any and all administrative and executive decision making, including the co-opting of non council officials to serve on committees. The introduction thereof in the bill is nothing new to what is contained in the MSA and the Structures Act.

It is superfluous to attempt to draft other national or for that matter provincial legislation to deal with constituting or establishing decision making within the municipalities to deal with Municipal Planning.

As rightly indicated in the bill the municipalities are the decision makers of ***first instance*** *and they should be allowed to constitute the decision making body without national or provincial interference in terms of the MSA.*

Inter alia this matter has been properly ventilated in the matter of the DFA, which draws the lines between the different levels of government in so far as decision making or for that matter the establishment of decision making bodies are concerned.

Further, section 59 of the MSA makes provision for a system of delegations of all matters within the powers, functions and duties of a municipality to deal with administrative efficiency in the context of all matters which fall within their jurisdiction.

The one criticism which has been widely accepted is that a dual system of processes and procedures can only contribute to the confusion and chaos currently prevailing planning."

"59 Delegations

[3] Municipal Structure Act, 117 of 1998 hereinafter only referred to as the Municipal Structures Act.

(1) A municipal council must develop a system of delegation that will maximise administrative and operational efficiency and provide for adequate checks and balances, and, in accordance with that system, may-

(a) delegate appropriate powers, excluding a power mentioned in section 160 (2) of the Constitution and the power to set tariffs, to decide to enter into a service delivery agreement in terms of section 76 (b) and to approve or amend the municipality's integrated development plan, to any of the municipality's other political structures, political office bearers, councilors, or staff members;..."

(2) A delegation or instruction in terms of subsection (1)-

(a) must not conflict with the Constitution, this Act or the municipal Structures Act;
(b) must be in writing;
(c) is subject to any limitations, conditions and directions the municipal council may impose;
(d) may include the power to sub-delegate a delegated power;
(e) does not divest the council of the responsibility concerning the exercise of the power or the performance of the duty; and
(f) must be reviewed when a new council is elected or, if it is a district council, elected and appointed.....

(4) Any delegation or sub-delegation to a staff member of a power conferred on a municipal manager must be approved by the municipal council in accordance with the system of delegation referred to in subsection (1).

[Sub-s. (4) added by s. 36 of Act 51 of 2002.]"

Committees

The inclusion of private individuals within the planning decision making body is also dealt with in Section 79 of the Municipal Structures Act, that allows for the co-opting of non-Council members (in other words experts), but it is within the discretion of the Council to permit such membership. It is not prescribed as the "national" legislation is now trying to do.

"Part ***5***
Other committees of municipal councils (ss 79-80)

79 Establishment

(1) A municipal council may-

(a) establish one or more committees necessary for the effective and efficient performance of any of its functions or the exercise of any of its powers;
(b) appoint the members of such a committee from among its members; and
(c) dissolve a committee at any time.

(2) The municipal council-

(a) must determine the functions of a committee;
(b) may delegate duties and powers to it in terms of section 32;
(c) must appoint the chairperson;
(d) may authorise a committee to co-opt advisory members who are not members of the council within the limits determined by the council;
(e) may remove a member of a committee at any time; and
(f) may determine a committee's procedure.

1.4 Private individuals and declaration of interest

One of the issues that have always been controversial with regard for the DFA is the inclusion of private practitioners on the DFA tribunal.

The declaration of interest clause within the bill give lip service to allow private individuals on the tribunals both at provincial and local government level, but does not act as a real deterrent for private practitioners to pursue their own agendas.

*The inclusion of private practitioners both at provincial and local government level is problematic. The only way in which this may be considered and considered as an option not a prescriptive provision is that it be provided that "**no town planner or professional practicing in the area of jurisdiction of the municipality may be a member of the Tribunal both at provincial and local government of that municipality.**"*

1.4.1 Appeal

We note that the convoluted appeal provisions have been removed and have been replaced by a single appeal process which refers to section 62 of the MSA. We are still of the opinion that this may not be the best process for an appeal to be dealt with since this appeal deals with only appeals against decisions in terms of delegated powers. We believe that if province has a role to fulfil this is where it can be most appropriately located with the inter-municipal appeals tribunal as proposed in the Gauteng Planning and Development Bill with representation from Province.

"Section 33 states that "*all development applications shall be submitted to the municipality as the authority of first instance*", except where the bill provides otherwise.

It is unfathomable that a local authority can be required to accept a provision that states the above without having clear indications as to what the prescribed periods will entail. No reference is made to the unreasonableness of the applicant or the local authority on the requirements to achieve the time periods.

This matter shall also be addressed under comments on the provincial interest and provincial planning provisions."

1.5 Other National legislation

The concerns outlined hereunder have not been addressed by the new version of the Bill.

"We have briefly addressed the provisions of the MSA in the context of the constitution of committees and delegations. However, what are of greater concern are the provisions of Chapter 4.

It is common cause that the MSA makes provision for the drafting of an IDP and SDF by municipalities that are linked to their budget and infrastructure.

Although Section 12(2) read with (5) briefly states that:

"(2) Municipal Spatial Development Frameworks must, in accordance with Chapter 5 of the Municipal Systems Act, contribute to and be part of the Integrated Development Plans…";

and Section 20(2) states that: "the Municipal Spatial Development Framework must be prepared as part of the municipality's Integrated Development Plan in accordance with the provisions of the Municipal Systems Act"; the content of the bill, gives the impression that the SDF as a requirement of the bill and of the MSA are two different documents to be drafted and dealt with differently from each other. A case in point would be e.g. dealing with conflict between the Municipal SDF and the Provincial SDF (see section 12(7))

The local authority does not see the need for a further national piece of legislation to deal with the same subject matter which is already dealt with as part of the MSA. There are various conflicts that are being created through the introduction of the municipal SDF's in the bill, E.g. the adoption in the bill as opposed to the MSA (see section 20 of the bill). The legal effect of the Provincial SDF's which is addressed under section 16 of the bill, without proper consideration of the provisions of the MSA, in particular section 35. The timeframes of SDF's in the bill as opposed to that contained in the MSA, do not align in so far as review periods may be concerned.

Although an attempt is made in section 22(1) to capture the essence of what was contained in the constitutional judgement against the DFA:

"22(1) *A Municipal Planning Tribunal or any other authority required … to make a land development decision in terms of this Act, or any other law dealing with land development, may not make a decision which* ***is inconsistent with a municipal spatial development*** *framework.*"

It does not deal with the fact that a municipality shall be "bound by its IDP" and it's SDF as a component of the IDP as contained in the MSA. (see section 35)."

1.6 Other departments and legislation

In dealing with land use management, the process does not start and stop with forward planning and the management of land. In fact the most important component is the legal implementation of land use rights.

In this regard other National Departments play and extremely important role in ensuring security of tenure and protecting the rights of the public and its citizenry.

Section 53 states the following: The registration of any property resulting from a land development application may not be performed unless the municipality certifies that all the requirements and conditions for the approval have been complied with.

This section attempts to include a general provision dealing with the registration of ownership. We believe that this may not be sufficient.

The custodian of all cadastral information is the Surveyor General and the custodian of all ownership information is the Registrar of Deeds. It is not only crucial that local authorities but national and provincial bodies understand and ensure that Spatial Planning and Land Use Management does not end at the allocation of land use rights but with the implementation thereof.

The bill is silent on the integration of the above and other departments that are role players in the cradle to grave process of land use management.

Section 29 and 30 tries to align other authorisations in terms of other legislation, but it is hopelessly inadequate in dealing with the land use management imperatives required to give effect to land use implementation to the benefit of the public and the citizenry. This cannot happen without the involvement of various government departments especially the Surveyor General and the Registrar of Deeds but within the ambit of their responsibilities.

Implementation

One of the constitutional objectives for local government is that all citizens should have access to basic services and affordable services. Land development cannot happen without the proper management of services. No local authority should be able to allow land development without ensuring security of tenure to the prospective beneficiary or buyer and accessibility to basic services.

1.7 Facilitation of abuse by decision makers

One of the biggest criticisms against the DFA tribunals by municipalities is the fact that the DFA made provision for the tribunals to "*decide any question concerning its own jurisdiction*"

Although the inclusion of the above under section 34 may have pure intentions, this particular provision as it was contained in the DFA were used for more sinister purposes in the opinion of some of the municipalities. It was *inter alia* upon this particular provision which the tribunals based their contention that they had the right to take decisions on conventional town planning application, which created the dual system of decision making on development applications.

To reintroduce this provision opens up the same situation which prevailed and still prevails in the reign of the development tribunals in terms of the DFA. It is further also introduced as part of the provincial appeal body's provisions, which just makes it more problematic.

We reiterate our comments above that it is unnecessary for this legislation to determine how a decision making body should be constituted if such provisions already exist within the MSA.

1.8 Provincial Planning, Provincial Interest, Regional Planning and National Interest

Although Schedule 5 of the Constitution refers to "Provincial Planning", being a functional area of exclusive provincial legislative competency, the pre-amble refers to "Regional Planning" as a concurrent function of National and provincial planning and urban and rural development.

The concepts of provincial planning, regional planning, provincial interest and national interests are used in various provisions of the bill and the context do not always indicate clearly what this in fact means. Although an attempt is made to define provincial interest and national interest (section 52) they are still vague and can be loosely argued and interpreted as meaning any and all applications.

Section 31 states that all development applications shall be referred to municipalities as the authority of first instance.

It should be noted that both provincial and national departments may join as parties to an application where National or Provincial interests can be proven. It is not necessary for these applications to be dealt with them as a decision maker of first instance for their interests to be taken into account.

1.9 Engineering Services

The SPLUMB version B-2012 is somewhat amended from the version dated May 2012, and that the new version does not have a Chapter 7 on Infrastructure Provision (now replaced by a single clause, 49). However, the definitions have not changed, which are likely to impact on actual implementation. Hence previous comments as submitted in May 2011 remain applicable.

"Although Engineering Services have been addressed briefly there are a number of comments on engineering services specifically that can be offered.

The MSA and MFMA, makes provision for the charging of tariffs and charges. Tariff and charges are an acceptable term for the recovery of monies and the rates at which metered services are charged by service providers.

The use of the word charges, throws engineering services contributions, which is a once off payment, within the pool of tariffs and charges that are annually reviewed and on which payments are done based on consumption and running services.

To refer to engineering services contributions and contributions for open spaces as "development charges" creates problems which are unnecessary in view of the distinction contained in other legislation.

The definitions of external and internal services should be re-assessed specifically with regard to its reliance on the boundaries of the property to be developed. This may very well work to the disadvantage of the local authorities. Detailed comments can be addressed on this issue. Similarly the definitions of open space, public place and public and private open space should be dealt with in terms of the current trend in development."

1.10 Contravention of Bylaws

Section 156 of the Constitution of the Republic of South Africa, Act 108 of 1996 as amended, provides as follows:

"156(1) A municipality has executive authority in respect of, and has the right to administer-

(a) The local government matters listed in Part B of Schedule 4 and Part B Schedule 5 not in the Bill of June 2012 of Schedule 5; (Billboards and the display of advertisements in public places in listed in Part B Schedule 5) and

(b) Any other matter assigned to it by national or provincial legislation.

(2) A municipality may make and administer bylaws for the effective administration of the matter which it has the right to administer".

Based on the foregoing executive authority delegated to municipalities, we request that the following be included in the provincial legislation:

Any person who contravenes of fails to comply with any provision of a municipality's outdoor advertising bylaws shall be guilty of an offence and on conviction shall be liable to a fine or imprisonment. The fines and the periods of imprisonment are as set and revised by the Chief Magistrate from time to time.

1.11 Integrated Stormwater Management Functions/Aspects

"Open Space" is an essential element within cities for ecological, socio-economic (recreation, heritage) and place-making (scenic) purposes. All Open Space should be integrated within a network and interlinked, especially natural Open Space that should be connected to create 'ecological corridors' that promote biodiversity and connectivity.

Ecological Open Space allows natural systems to function: It purifies water, harbours plant and animal life, cleans the air, regulates urban climate and plays a critical role in our quality of life. This life-giving function of Open Space is the most threatened by urban development, urban growth, densification, etc. Watercourse ecosystems together with ridge ecosystems are the two most important elements of Open Space within a city, as it forms a 'green' grid. The ecological benefits of these two Open Space elements are two-fold – it increases the potential for biodiversity and mitigates the impacts of development. Watercourses, wetlands and dams function to process water and regulate run-off, thus protecting and regulating our scarce water resource. It acts as sponges to remove pollutants, recharge ground water, accommodate floods and thus prevent flood damage to development. Watercourses, that include wetlands and dams within their floodplains, must be conserved within Open Space.

These principles are entrenched in Section 24 of the Bill of Rights of our Constitution, and in national environmental legislation like NEMA where interaction with the environment is clearly set out in the Principles in Chapter 1. Unfortunately these principles are not applied in the proposed Spatial Planning and Land Use Management Bill, 2012. Open space is defined as 'for recreational area' only, and unfortunately ignores it's environmental-, ecological- and flood management purpose completely.

The above is extracts from the Tshwane Open Space Framework (TOSF), and with that as background the new proposed legislation must be scrutinised to incorporate environmental principles. The proposed legislation is the most appropriate to enforce.
From a stormwater- and flood management perspective the following amendments are proposed and must be incorporated into the proposed Bill and/or future Regulations:

	ASPECT	REFERENCE CLAUSES IN THE BILL
1.	**Definition of open space** The definition of open space must be changed to not only be for use by the community as a recreation area, but also include the use of open space for environmental- and flood management purposes	1(1)
2.	**Delineation of watercourses** Watercourses form the natural drainage routes of an area where stormwater will flow, and must thus be protected by Open Space. Watercourses must be included and/or indicated on national,	14, 16, 19, 21,

provincial, regional and municipal frameworks and applications, being the National Spatial Development Framework, Provincial Spatial Development Frameworks, Regional Spatial Development Frameworks, Municipal Spatial Development Frameworks, the Municipal Land Use Scheme and the Development/Land-use Applications Procedures. | 25,

3. Flood lines

All watercourses have flood lines which are used as basis for determining the width of the Open Space required to protect it. Section 144 of the National Water Act (NWA) is currently the only legislation (higher than municipal policies) requiring that flood lines be indicated on development applications. In terms of the NWA the 1-in-100-year flood lines must be indicated on the layout plans of new townships for information purposes. This is mentioned nowhere in the proposed Bill or Regulations. | -

The 1-in-50-year flood lines must also be included and/or indicated on at least municipal and regional frameworks/schemes and applications, being Regional Spatial Development Frameworks, Municipal Spatial Development Frameworks, the Municipal Land Use Scheme and the Development/Land-use Applications Procedures. | 19, 21, 25

4. All watercourses and floodplains must be protected by Open Space (Land for parks and open space)

All watercourses shall be on land zoned as Open Space. | 50(1)

The proposed Bill provides that only development/land-use applications which provide land for residential purposes, shall provide land for open space. This must be changed that with all applications affected by a watercourse, land is provided as Open Space over the watercourse.

The 1-in-50-year flood lines are used to determine the width of the open space to be provided. The application procedures must require that flood lines are indicated on the layout plan - Further motivation for point 3 above.

5. Restriction of buildings/development within floodplains

Currently no national or provincial legislation prevent buildings from being erected within floodplains. Municipalities must rely on Municipal bylaws and/or in-house policies only to enforce this. | -

Linked to the points above, the proposed bill and future regulations/schedules are the most appropriate legislation to include the restriction of buildings/ development within floodplains as this legislation governs development and open space.

1.12 <u>Transport Development</u>

No reference is being made in the Bill to the requirements set out in Section 38 of the **National Land Transport Act, Act 9 of 2009** for substanial changes in land use. These requirements can be summarised as follow:

1.12.1 All persons are bound by the provisions of published integrated transport plans and that no substantial change or intensification of land use on any property may be undertaken without the written consent of the relavant (transport) planning authority. Developments on any property within the area of jurisdiction of the planning authority are subject to **traffic and public transport assessments** as prescribed by the Minister (of Transport).

1.12.2 Any authority with responsibility for approving substantial changes in land use or development proposals which receives an application for such changes or intensification, **must:**

(a) Within 14 days of receipt of such application and prior to considering or ruling on such application, submit such application to the relevant (transport) planning authority for its assessment and determination of the impact of such application on the integrated transport plan and public transport services; and

(b) Ensure that such application is accompanied by the required traffic and public transport assessments, and has sufficient information for the (transport planning) authority to assess and determine the impact of the application on transport plans and services.

1.12.3 The (transport) planning authority must, within 90 days:

(a) Approve or refuse an application for changes or intensification in land use or development; and

(b) Submit its written decision and any objections with respect to such application, including directions or conditions for compliance with the integrated transport plan, to such authority vested with responsibility for considering the application.

1.12.4 The authority must make a decision, but may not approve such application, in conflict with the direction or conditions required by the (transport) planning authority.

1.12.5 Where any person is aggrieved by any decision of the (transport) planning authority with respect to a ruling following an application implying substantial change or intensification of land use, such person may appeal against the decision in the manner and within the time prescribed, to the tribunal or other entity in the relevant province responsible to hear appeals lodged by persons who are dissatisfied with the decisions of the municipality regarding applications to establish townships or to change land uses. In this specific case it will be the Gauteng Planning Tribunal as proposed in the draft Bill.

1.12.6 Any person who undertakes a development involving a substantial change or intensification in land use or development proposal without the approval of the (transport) planning authority or contrary to a condition imposed by such authority, is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding six (6) months.

Lastly, as a principle and in line with the NLTA (2009), the proposed legislation should support and be sensitive to the promotion and support of public and non-motorised transport as well as the integration of land use and planning.

CONCLUSION

The above comments address the overall problems that we are of the opinion should be resolved before the Bill is enacted. Attached to these comments are most importantly the detailed previously rendered and the comments related to the specific sections contained in the Bill.

The City of Tshwane herewith would like to submit comments on the Spatial Planning and Land Use Management Bill[4] as introduced in the National Council of Provinces on request of the Minister of Rural Development and Land Reform. These comments were delivered by the Legal and Shared Services Department (Corporate Legal compliance), City Planning Department, Transport and Roads Department, Agriculture and Environmental Management Department.

STRATEGIC EXECUTIVE DIRECTOR: CITY PLANNING AND DEVELOPMENT.

On request, this document can be provided in another official language.

[4] The use of the term "bill" shall be interactively used with the term "Act" in reference to this bill since some of provisions in the bill refers to "act"