CITY OF TSHWANE
IGNITING EXCELLENCE

City Planning and Development Department

Room 12007 | 12th Floor | Isivuno | 143 Lilian Ngoyi Street (Van der Walt) | Pretoria | 0002
PO Box 3242 | Pretoria | 0001
Tel: 012 358 0975 | Fax: 086 214 4411
Email: makgorometjem@tshwane.gov.za | www.tshwane.gov.za | www.facebook.com/CityOfTshwane

My ref: SPLUMB ANNEX E
Your ref:
Contact person: M van der Vyver
Section/Unit: Land Use Legislation and Applications

Tel: 012 358 7956
Fax:
Email: malievdv@tshwane.gov.za

8 August 2012

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

Attention: Ms Phumla Nyamza

SPECIFIC COMMENTS PER CHAPTER/PAGE AND SECTION

P 2:
"To promote greater consistency and uniformity in application procedures and decision-making structures for provincial and municipal authorities..." note this has been amended: to read as follows: "to promote greater consistency and uniformity in application procedures and decision-making by authorities responsible for land use decisions and development applications." Shold this comment not be deleted??
Should include 'national'. The Ministry in the Presidency for National Planning is a case in point. Any future spatial directives given by the Ministry will directly or indirectly affect land use.
In the event that any legal case related to land use is escalated beyond municipal courts and High Courts to the Supreme Court, decisions should be guided by the uniform spatial planning principles. As indicated on p 25, in ch2, s6(e)(i): "...all spheres of government ensure an integrated approach to land use and land development that is guided by he spatial planning and land use management systems as embodied in this Act"...

P 3: PREAMBLE
" And whereas regional planning and development, urban and rural development and housing are functional areas of concurrent national and provincial legislative competence..." This should include "municipal" as municipalities have been accredited to provide the full housing package.

CHAPTER 1: INTRODUCTORY PROVISIONS

Definitions

"applicant": The definition of applicant should be amplified by the inclusion of a successor in title to the applicant or authorised agent by the owner and should for purposes of section 50(1) INCLUDE THE OWNER

"application": There appears to be a need to insert a definition for application to make it clear where other authorisations or consents are required, but does not presuppose an application in terms of this act.

"engineering services": It is accepted that there is a new trend in development in South Africa which includes what is known as security development both on residential and business sites. In these instances the legal entities that govern the development internally (mainly section 21 companies), provide internal services that are regarded as private services including roads (installed and maintained).

This is not catered for in this definition or in the definition of external and internal roads. It may be the intention that the specific reference to "municipal roads" in the definition excludes private roads but this needs to be clarified by the legislature.

"inclusionary housing": The wording of "affordable housing" is vague and should be defined.

"land development": Also includes the erection of structures – how is this compatible with the National Building Regulations and Standards Act?

The definition of 'land use management system" in the second line the words "land use "must be added before "schemes"
"executive authority" I defined but this should mean the body in which the executive authority is vested since by delegation executive authority can also mean the execution of powers functions and duties by a person so delegated to exercise the power.

"external engineering services": Over and above the abovementioned comments on the definition of internal and external notices, there appears to be an undefined concept of a "land area" within the definition of external services. This should be clarified or defined.

Further, the reference in the definition to **"as prescribed"** remains uncertain until we presume regulations or norms and standards are published. The usage of the word "serve" in the context of engineering services is ambiguous since engineering services serve a larger geographical area than only site specific applications. The requirement for a causal link between the development application site and the provision of the engineering services should be incorporated more in line with the Town Planning and Townships Ordinance, 15 of 1986 (the "Ordinance").[1]

Add the word normally to the definition of "external engineering services". The definition of "external engineering services" means an engineering service **normally** situates outside the boundaries of a land area and which is necessary, as prescribed, to serve the use and development of the area.
"internal engineering services": Amend the paragraph to read: "internal engineering services" means an engineering service within the boundaries of a land area and which is necessary, as

[1] Hereinafter referred to as the Ordinance

prescribed, for the use and development of the land area and which is to be owned and operated by the municipality or service provider **and include any connecting/link service which may be necessary , where such connecting point is situated outside the boundaries of the land area, as well as a pro-rata portion of boundary services which are necessary to provide sufficient capacity or access to each erf in the land area.**

"incremental upgrading": The definition refers to "informal areas", while the act itself makes reference to informal settlements under section 6(a)(i) and section 22. – the definition now includes a settlement or area under traditional tenure..

"land development": This definition is ambiguous in that it firstly deals with the erection of buildings as land development then in the alternative "or" the change of land use. These processes are integrated and forms part and parcel of the same process. There is no need to differentiate between the two processes or do so in the alternative. Further, land development should include development through sectional title, which does not necessarily require change of land use but is in fact categorised as land development.

"land use": The definition states that it means the purpose for which land is used, but it should include buildings. Thereby reading *"means the purpose for which land **or buildings**...."*

"land": There are various pieces of legislation which purports to define the concept of an "erf". This includes the Deeds Registry Act, 47 of 1937 and the Land Survey Act, 8 of 1997. These specifically refer to an erf being a "registered", lot, plot, stand, portion and including a remainder. This definition limits the real meaning of an erf which is much more extensively worded in other legislation. This should be read with the definition of a township which also refers to erven in a different context.

"open space": Experience within local authority indicates that open spaces are not only for "a community as a recreation area", but in fact may be open spaces provided for its unique characteristics or conservation value. E.g. areas where the topography is such that it can only be open spaces, like ridge areas. Other open spaces have the purpose of dual functionality in that they may be used for green servitudes and stormwater attenuation ponds.

The definition of Open Space must be changed to not only be used by the community as a recreation area, but also include the use of open Space for environmental – and flood management purposes. (Reference Clause in the Bill 1(1))
The definition of **Open Space** is limited to land set aside or to be set aside for the use by a community as a recreation area. Ecologically sensitive areas such as wetlands, areas within floodlines and protected areas where no development is to occur are not covered by this definition.

<u>Proposed Revised Definition</u>: **Open Space** can be defined as land predominantly free of buildings that provides ecological, socio-economic and place making functions at all scales within the municipal area.

A **Park** can be defined as a well developed, mono-functional open space typically within a residential context that has a neighbourhood or local influence and provides the surrounding residents free access to and opportunity for:

- community and social interaction;
- children recreational play areas (with play equipment); and
- passive recreational opportunities (benches, lawn areas)

"Outdoor Advertising": Outdoor advertising means the act or process of notifying, warning, informing or making known or any other act of transferring information in a visual manner, primarily to attract the attention of road users.
"provisional general plan": Although this definition may be included for the specific purpose of formalising informal settlements, it is not clear where it will be utilised and how.

"provincial roads": A need has been identified, certainly in the Gauteng Province for dealing and catering for provincial roads. Case in point would be the provincial task team that is looking at developing a system of engineering services contributions for provincial road. In defining external in internal roads as well as provincial roads, cognisance should be taken of the Administrator's Notice No 120, which specifies in particular what type or class of roads should be dealt with and how they should be dealt with. Please also take note of the requirements as contained in the Gauteng Infrastructure Act, with regard to development application and the reservation of provincial roads that are demarcated in terms of the said Act.

Municipal and other roads: Reference is only made to municipal roads. Roads of other authorities that may be require to enable access and movement are not at all mentioned.

"public place": The provisions of the Transvaal Local Government Ordinance, 1939 make provision for a definition of a public place. It (section 63) *inter alia* states that it is any open area set aside for the use and benefit of the inhabitants in the area "vests". It goes further and it states how it is to be set apart, either by the filing of a general plan with the Registrar of Deeds or the registration of a public servitudes. Although the definition includes the word "vests" it goes not further in explaining how it shall be vested. In the later part of the definition it includes a "public open space" and a servitude, however this is contradictory in the sense that it may fall under open space of public space on the interpretation of both definitions.

The definitions for **"Open Space" and "Public open space"**: These definitions are confusing as their usage seems to be similar except for the ownership.
"publish": Publication does not always only include a general notice but may in fact include a specific notice by an authority. Further, the general concept of publish does not exclude other media like newspapers. The definition indicates a general notice in the "Gazette" it is presumed that Gazette refers to the Government Gazette and it should be clearly specified.

"servitude": Contrary to the definitions of public place and open space, which allows for vesting, this definition states that a servitude is only a servitude if registered against the title deed. It does not make provision for *ex lege* acquisition of servitudes. Examples of these servitudes would be those that are imposed by the Rand Water Board and municipalities under section 63 of the Local Government Ordinance, 1939,

"Spatial Development Framework": As mentioned above the concept of a Spatial Development Framework at municipal level should be governed and is comprehensively dealt with in the MSA. Please see general comments indicated above.

"township": The definition of a township in the Ordinance, was the subject of dispute and litigation due to the fact that it did not clearly indicate when a local authority may require an applicant to submit an application for rezoning as opposed to a township. A rule of thumb has been developed that indicates that the moment multiple uses, erven (or if unregistered areas) or spaces either collectively or individually exists this constitutes a township. It includes multiple uses under one zoning. This new definition does not assist nor amplify what is already a contentious issue. What is a great **gap** is the fact that once again sectional title developments are not included. If reference is made to erven it should include **units and section** to prevent the development of multiple dwellings without township establishment.

The necessity for a township should be in the sole discretion of a local authority and the definition should state that if a development proposal or application in the opinion of the local authority constitutes a township, that that then constitutes a township.

The definition of a "township" is further defective in that it refers to " ... as such on a general plan.." A "general plan" is defined as a general plan approved by the Surveyor General in terms of the Land Survey Act, 8 of 1997. This means that before a township can be called a township it has to have an approved general plan. However, the general plan is one of the programmatic procedures of establishing a township. It is necessary to, before the approval of a development application, determine when a township can be regarded as a township for purposes of a development application.

The term "Zone" in the definitions and elsewhere in the Bill must be changed to "Use Zone"

Section 4

Suffice to reiterate what has already been said in the general comments with regard to Municipal Spatial Development Frameworks being governed by the Municipal Systems Act, 2000.

There are a few inconsistencies in terms or whether of not the development of National and Provincial SDFs are compulsory. Section 4 (a) refers to SDFs prepared and adopted by National, Provincial and Municipal authorities while 12(1) says that National and Provincial Authorities **may** prepare. Sections 13(1) and 13(1) say National and Provincial **must** prepare.

Section 5

Ad section 5(1)(c)

The re-categorisation of municipal planning without reference to the Constitutional Judgement on the DFA is of concern.

The statement is made that the control and regulation of land use within the municipal area is dedicated to the municipalities where the nature, scale and intensity of the land sue does not affect provincial planning – this might cause some conflict as it is not clearly defined WHEN a development will influence provincial planning
The functions as contained in Schedule 5 read with section 155 of the Constitution conferred upon local authorities were properly ventilated in the constitutional court and any attempt to deviate from that interpretation can only create unnecessary conflicts in the act and might encroach on the mandate of the local authority. The reference in particularly section 5(1) (c) to provincial planning and national interest is of concern due to the fact that although section 10 tries to indicate what will constitute provincial interest, it still relies on the minister determining the provincial interests. Similarly it also relies on the minister determining at a later date, national interests.

CHAPTER 2: DEVELOPMENT PRINCIPLES, COMPULSORY NORMS AND STANDARDS

The principles regarding the promotion of public transport and land uses integration is lacking. Currently Spatial Planning is seriously hampered by all sorts of conflicting strategies and a total lack of co-ordination between the spheres of government and other relevant organisations specifically in terms of Public Transport and land use integration. We strongly believe that the

Draft Spatial Planning and Land Use Management Bill, 2011 should also address these critical matters.

In the past work has been done in terms of The National Spatial Development Perspective. These Perspective for example sets guiding principles for government infrastructure investment and development spending by directing (i) government spending towards localities of economic growth and areas of potential; and (ii) future settlement and economic development opportunities into activity corridors and nodes that are adjacent to or link the main growth centres. These principles should be included in Chapter 2 of the Bill.

Section 6(1) states that the general principles shall be applied to the actions of all organs of state, and other authorities. This should read "all parties". It is necessary to ensure that applicants in the development applications motivate that they have complied with the general principles of development. The burden of proof of an application should be that of the applicant not the local authority. This is especially necessary to ensure accountability by applicants. The local authority finds itself in the unfortunate position of having to motivate why they took certain decisions in contradiction of these principles. This should not be the case. The applicant should make out a case for his development *prima facie* with reference to these principles and other planning merit.

The principles as set out are supported but principles regarding the promotion of public transport and land uses integration is lacking. Currently Spatial Planning is seriously hampered by all sorts of conflicting strategies and a total lack of co-ordination between the spheres of government and other relevant organizations specifically in terms of Public Transport and land use integration. We strongly believe that Draft Spatial Planning and Land Use Management Bill, 2012 should also address these critical matters.

In the past work has been done in terms of The National Spatial Development Perspective and this has been accepted by cabinet. These Perspective for example sets guiding principles for government infrastructure investment and development spending by directing (i) government spending towards localities of economic growth and areas of potential; and (ii) future settlement and economic development opportunities into activity corridors and nodes that are adjacent to or link the main growth centres. These principles should be included in Chapter 2 of the Bill. Principles of compaction and densification of existing urban areas should also be addressed in this section.

Chaper 2 :7 (e) iv: mentions a "public participation process" that is not defined in terms of the Bill and thus will lead to confusion.

Section 7

Please note our comments regarding "informal areas" as a definition which makes section 7(a)(ii) and (iv) contradictory.

There are various schools of though on whether the determination of a development application can be argued based on the diminution of value. This has not been tested constitutionally and the inclusion thereof may in fact be challenged constitutionally especially based on section 25 and 25(3)(c) of the Constitution[2].

Section 7(a)(iii) of this act states "...including land use schemes, include provisions that enable redress in access to land and property by disadvantaged communities and persons;" – this is a

[2] Constitution of the Republic of South Africa, 1996 (hereafter referred to as the Constitution)

bold statement. The question that is raised is – why should the focus only be on the disadvantaged communities – why not also to redress the spatial dis-functionality of the urban form, focus on job creation etc?

Section 7(a)(v): Land development procedures mostly fall within the jurisdiction of local municipalities. Matters relating to tenure mostly fall within the national sphere. If land development is simultaneously intended to provide for tenure, the bill should provide guidelines, regulations and capacity to integrate the two processes across the different spheres.

Section 7(b)(i) of this act deals *inter alia* with municipal planning and it should therefore specifically include that development be promoted within the fiscal, institutional and administrative means of not only the country but the local authorities in so far as municipal planning is concerned.

Section 7(b)(ii) – It should be clarified what is meant by the inclusion of the "safe utilisation of land" under this section. What is intended by this statement in so far as the accountability and responsibility of the local authority is concerned?

Section 6(b)(iii) This provision states that consideration shall be given to current and future costs of all parties. "All parties" are not defined and this should include the cost to local authorities to be able to comply with its constitutional objectives of providing access to basic affordable services etc.

Section 7(e)(v) Although this section promotes transparent public or citizen participation the inclusion of section 6(a)(vi) limits the interest of the public to that which is not related to the value of their property. This may very well as indicated above become an issue of constitutionality. The impact of development on the value of property on an individual basis is more often that not the basis for objections during public participation.

Certain of the application and development principles in Chapter 2 are so wide and general that it will be difficult to implement, e.g. section 7 (a), (b),(c) and (d).

Section 8

Section 8 – We reiterate our submission as indicated above on the chaos that may be created by the multiple sets of policies, frameworks, regulations, norms and standards, general principles, unilateral directives and publications by the MEC and Ministers on certain matters, etc. etc.

It should also be noted that no time frames are mentioned where in the standards and norms be prescribed. Mention is made that the standards and norms must be prescribed after public consultation – how, the methodology, the scope of the consultation must be prescribed.

CHAPTER 3: INTERGOVERNMENTAL SUPPORT

Section 9

This is a repetition of that which is contained in the constitution section 154. It may be necessary to give more detail on how the monitoring process will be administered. We accept that provincial and national shall monitor compliance with the development principles. However as indicated above, the burden of proof of compliance with development principles cannot be regarded as the responsibility of the authorities only but also that of the professional fraternity of planning.

Section 10

It cannot be emphasised enough the concerns around an undeterminable provision of "provincial interest" being published by other functionaries and the possible impact on local authorities, both on implementation of development. The risks of provincial legislation determining provincial interest may very well encroach at different levels on the functions and powers of the local authority.

Section 10(2) the reference in this section to the "supervision" of the province of the local authority cannot be reconciled with that which is contained in the Constitution although reference is made to the Constitution in the context of (2).

The legislature should guard against giving executive power in any form to the provincial bodies that will be to the detriment of the citizen in that local authorities may as in the case of the Development Facilitation Act, 1995 abdicate their responsibilities to do municipal planning by allow provincial bodies to interfere under the auspices of "supervision", support and assistance.

Section 10(3) (b) (ii) The use of the word "Structure Plans" in the context of this provisions is not appropriate since it is a creature of the old Physical Planning Act, rather than the intended new order legislation. This is also not a concept which is defined in this particular bill.

Section 10(4) – See our comments on the separation of powers and the general comments on the use of further publications and directives to determine provincial interests.

It is also clear when the Minister and when the Premier or for that matter the MEC shall make determinations of matters of provincial interest. Clarity on the respective delegations and parameters of authority should be given.

CHAPTER 4: SPATIAL DEVELOPMENT FRAMEWORKS

Section 12

Suffice to restate at this point that the local authority does not understand why the provision of the MSA cannot be used for the drafting and preparing of a Spatial Development Framework and the need for separate provisions in this regard.

The bill is saturated with provisions that are trying to clarify the status of Spatial Development Frameworks in the context of the Bill, which provisions may very well be contradictory to the MSA.

In broad strokes they try to emphasise in the Bill that the Spatial Development Frameworks are to be regarded as guideline documents. Section 12(1)(d) AND Section 12(2)

However, in the wording of Section 22 the status of Municipal Spatial Development Frameworks (as a component of the IDP) differently in that it states that: "*... binds the municipality in the exercise of its executive authority, except to the extent of any inconsistency with a municipalities Integrated Development Plan or National or Provincial legislation, in which case such legislation prevails...*"

Great care should be given to the status of National, Provincial and Municipal Development Frameworks and dealing with conflicts and inconsistencies within these policies, without

encroaching on the institutional arrangements of the Constitution and the autonomy of local authorities.

Cycle of review – Unless the 5 year cycle for the preparation and adoption of National, Provincial, and Municipal SDF's and Land Use Scheme is synchronised the authorities may find itself having to make amendments to these documents almost on a 6 monthly period.

Section 13

Section 13 (2) of the Bill should include a section on public transport and land uses integration that should be dealt with in the Spatial Plan. Principles of compaction and densification of existing urban areas should also be addressed in this section

Section 14:
It is noted in the bill that the contents of the National Spatial Development framework should be consistent with applicable national environmental management legislation. The department is of the view that the bill is lacking on issues related to the impacts of climate change as they are relevant to spatial planning. The contents of the national spatial development framework must therefore include the following:

- The national spatial development framework must strengthen the strategic guiding role of the regional level on climate change adaptation.
- The national spatial development framework must provide funds to the regional level to act on knowledge dissemination on climate change issues.

Section 17 :

This should be read with our comments on section 12 as well as the provisions in the MSA. We have already indicated that it appears that the Spatial Development Frameworks are to be regarded as guideline documents to decision making in planning. However, inevitably there may be instances where the National, Provincial and Municipal SDF's are in conflict with each other. A process of dealing with conflict has been proposed in this bill, but then it is legislated on the other hand that there may be no inconsistencies between these documents. Why would there then be a need to have procedures whereby these conflicts are resolved?

It is not understood why this bill and other legislation should be used to either legislate on conflict or processes of dealing with conflict between plans, policies and documents within the different spheres of government. It should be as simple as using the Intergovernmental Relations Framework Act, 13 of 2005[3] to resolve these issues.

Very little use is made of this legislation which was specifically designed drafted to deal with the impact of the new constitutional dispensation in South Africa and possible conflict between spheres of government. Not only in the planning functional area, but other areas where possible functions and powers may overlap. The need to include dispute resolution between government spheres in all National and Provincial legislation seems unnecessary in view of the IRF.

Section 17(1) - It should be clear that the coming into operation of the Provincial Development Framework shall be on the publication thereof. It seems confusing whether it is the date of approval or the date of publication. It shall be simpler to deal with it on publication.

Section 19:

[3] Hereinafter referred to as the IRF

It is noted in the bill that the contents of the Regional Spatial Development framework should be consistent with applicable national environmental management legislation. The department is of the view that the bill must cater for the specific environmental issues that have impacts on spatial planning, such as climate change at regional level. The contents of the regional spatial development framework must therefore include the following:

- Propose guidelines for climate change adaptation towards municipal planning.
- Disseminate knowledge on climate change issues to the municipal.

Section 12:

This provision again should be read with Chapter 5 of the MSA, especially with regard to e.g. the giving of notice of the municipal spatial development framework as oppose to the requirements of the MSA. These are in some instances in conflict with each other. Although it may be a principle to strengthen certain provisions already in the MSA, it is our opinion that it in fact does not strengthen by repetition but rather creates additional administrative burdens and conflicts.

Section 21:

The contents of the Municipal Spatial Development Framework must include the following:

- Create social knowledge of climate change adaptation actions.
- Develop climate change adaptation guidelines.
- Create working cooperation with other sectors on climate change and spatial planning issues

Include an implementation plan comprising:

(i) Sectoral requirements including budgets and resources for implementation

It must be noted municipal frameworks, especially for a large metropolitan municipality such as Tshwane, are strategic in nature. While they may incorporate elements of existing sector plans, it is also vital that future planning is reflected it the MSDF. It stands to reason, then, that other sector plans additionally have to respond to a revised MSDF. The more detailed plans per sector would more appropriately reflect budgets and resources required and/or available in relation to the specific sector. Sector plans would also be more appropriate to indicate implementation plans. In addition, the IDP essentially reflects budgets and resources of the City in relation to its overall City Development Strategy. This particular point should rather be excluded for purposes of the MSDFs. Points ii, iii, iv and v should suffice.

Section 22:

Section 22(1) and (3) read with section 17, section 12(2), does not make sense. Section 22(1) tries to indicate the status of Spatial Development Frameworks as a collective, but for Provincial Spatial development Frameworks there is a particular section dealing with its legal status. As far as formal requirements of amendment of SDF's at all levels are concerned, decisions should be taken only if the SDF's are amended prior to the decision. I.e. that if a tribunal wants to recommend that based on merit the SDF's should be contradicted, it should be come subject to the SDF's being amended first and then approval implemented.

The act should have an absolute prohibition for taking any decisions contrary to the SDF's unless the application has enough merit to warrant the amendment of the SDF's after which the decision can then be taken still consistent with the SDF.

Section 22(1) and (3) reads similar to section 35(1)(b) of the MSA how does this relate to the conflict resolutions provisions and the fact that section 12(2) specifies that these spatial

development frameworks are only to be guidelines. Also see section 19 and 17(3) and section 17(4). It is still not clear what the status of the SDF's are, what will prevail, and if there can be inconsistencies?

CHAPTER 5: LAND USE MANAGMENT

Please refer to our general comments with regard to the interrelationships with other Departments, the requirements to deal with proper engineering services provisions within a land use scheme, which has to be dealt with at that level as well and the list of type of provisions which does not include consent uses.

Section 24(c) to (f)

It is not understandable how sub sections 24(c) to (f) must be implemented or how they will work;

- What is an incremental introduction of a land use scheme? Please explain.
- How must a land use scheme promote the inclusion of affordable housing? ; What is "affordable housing"?
- How must a land use scheme include development incentives?
- How must a land use scheme promote national policies?
- What kind of incentives can be included into a land use scheme?. This should be done as part of the spatial development frameworks or other Council policy.

The need for development incentives to be included in a land use scheme is not clear, surely it cannot be something which you need to regulate, but rather look at in the context of policy implementation and the Spatial Development Frameworks. Why would you include this into a land use scheme? It can only ever be a policy and not a peremptory provision.

Section 26(5) – This section states that a municipality may amend its land use scheme if it is in "public interest" to do so. This has always been a difficult concept to prove. In so far as municipal planning is concerned there are far wider interests, principles and policies to take into account over and above public interest.

Section 28

Section 26(4) read with section 28(1) Both of these provisions make it possible for a municipality to amend its land use scheme, the one just indicates and amendment the other by specifically rezoning. It is not clear what the distinction is between the two types of amendments. The local authority may also in the same breath review its land use scheme in terms of section 27(1).

It should be clarified what the intention is of section 28. If it is the intention to ensure that where a local authority wants to bring a development application of its own accord, that public participation is undertaken then surely it cannot be confined only to **rezoning** applications as the heading of section 28 implies. It should be stated in more general terms that where the local authority intends bringing a development application to amend the scheme whether by rezoning or township establishment or any other application in terms of the scheme then public participation should be prescribed.

Section 29

Section 29 and Section 30 seeks to integrate processes within other departments and levels of government, however this will require detail and refinement in the provincial legislation and should not encroach on functions of powers within the municipalities.

CHAPTER 6: LAND DEVELOPMENT MANAGEMENT

Section 33

Section 33 – It has already been indicated that section 33 is misleading in that it may appear that a municipality is given autonomous power over decisions on land development applications, it is stated with a proviso "except as provided in this Act"

Section 35 to 37:

Section 35 to 37 deals with the establishment of Municipal Planning Tribunals. Comments under our general observation of the bill have been given in this regard. In short the Municipal Structures Act, and the MSA deals with the institutional arrangements and decision making bodies of a municipality. There is no need to redraft this in this particular bill. It should be sufficient to state that a "municipality should take a decision on a matter" and that "they may impose any condition they deem expedient".

The very ambiguous use of the terms as contained in section 40 (7)(b) "reasonable" and "relevant" conditions, should be taken out of the bill. The use thereof shall only lead to unnecessary litigation. It will delay planning processes considerably if arguments and disputes arise out the question – "in whose opinion" must the condition be reasonable and relevant.

This would be to the detriment of all parties and may in fact lead to maladministration within the decision making process.

It is proposed that should this condition prevails that it be rephrased to indicate that the conditions regarding provision of engineering services and development charges should be "In accordance with existing provincial legislation, or in the absence thereof, according to prevailing municipal policies".

Section 40 (7)(f) – As indicated under the provisions of the municipal tribunal, similarly there is no question about the fact that no committee should be able to determine its own jurisdiction. This makes nonsense of any provision limiting authority and can be abused by an irresponsible committee.

Section 36 - see sec 51 – Internal Appeals – See our overall comments on appeal mechanisms

Section 38

We have indicated under our general comments already that we do not believe that the declaration of interest by tribunal members are implementable and that private practitioners have abused the membership outside of these declarations.

Section 48(2) – revised – "The Municipal Council may, at the request of a Municipal Planning Tribunal, designate municipal official ..."

We do not believe that this is at all within the ambit or powers of the planning tribunals. It states that *"A planning tribunal [which includes provincial and municipal tribunals] may designate a municipal or provincial official as the case may be or appoint any other person as an investigator to conduct an investigation in terms of subsection (1)"*

It is not clear how such an appointment will be reconciled with the conditions of service of the relevant employee and executed in relation to the Labour Relations Act, 1995. It would be more appropriate to state that: *"A planning tribunal may direct a municipality to undertake an investigation or a provincial administration respectively with regard to development application"*. It especially cannot be an official or other person without qualifying or specifying credentials. In fact it may be contrary to other legislation dealing with procurement of services.

Section 52

Section 52(1) This is an ambiguous reference to national policies and interest and our general comments.

The Minister may join on an application where National Interests are involved. The essence of a development application remains the change in land use and should be decided upon at local government level.

Section 52(3) Where an application is of National Interest, it must be referred by the applicant to the Minister. This vests the discretion of whether it is of National Interest within the subjective opinion of the "applicant" whether it is of National Interest.

The matter should be referred to the local authority and if the applicant is of the opinion that it is of national interest he may make such a submission after which the local authority can determine that it must be referred to the minister upon which the minister may join as a party to the application.

Private individuals should not have an influence with regard to the determination of national or provincial interests.

Section 52(5)(b) should be removed since this provision flies in the face of the statement in section 31 which states that all development applications are to be decided by a local authority as the decision maker of first instance.

Section 45

'Interested party' – Section 45. Is this an objector? No definition provided. In Section 54, the first mention of 'objectors' made. In Section 45(4) the term 'petition to intervene' is made. Will this be sufficiently explained in regulations?

This provision can be used to include the MEC, the Minister and the Premier to state that where a matter is of national or provincial interest that these functionaries can join an application as parties to the application.

The Gauteng Removal of Restrictions Act, in particular section 2 deals comprehensively with the substitution of authority. We suggest that this particular provision be used to deal with what is intended under section 45(6) since it includes the functionaries and the different pieces of legislation as the source of these functions in the title deeds.

The concept of e.g. "controlling authority", unless linked with its source legislation it may in fact have a different intention or consent process as indicated in the title deed.

Why isn't the description (definition) of a 'service provider' in Section 45(7) not made a definition?

Section 39

This should be read with our comments on the membership of outside consultants and professionals serving on planning tribunals. The same principles of interest and requirements for appointments should be taken into account.

Section 49

Although we are in principle not opposed to reaching agreement on the installation of services (external and internal), this section does not make provision for instances where agreement cannot be reached. Development cannot be hampered by litigation and disagreement indefinitely by the parties.

Please refer to the provisions of the Town Planning and Township Ordinance, 15 of 1986 with regard to services appeal boards that are empowered to determine the provision of services and contributions towards services.

See also our general comments with regard to the acknowledgement of accepted terminology where engineering services are concerned. E.g. Bulk engineering services, endowments, contributions, shared services contributions, leap frog development, link services, etc.

Uniform guidelines and conditional will have to be complied with nationally. However, the national guidelines in this regard must still be complied with.

It should be noted that the Gauteng Planning and Development Regulations in this regard is in an advanced stage and cognisance should be taken thereof.
Section 49(2). Can a 'service provider' not also provide external services?

Section 50

Section 50(1), (2), (3) - Parks and open spaces are used interchangeably as is the case in other pieces of legislation such as the Town Planning and Townships Ordinance 15 of 1986.
It is proposed that a clear distinction must be made between provision of land for parks or recreational open space and ecologically sensitive areas or land to be set aside for conservation purposes within residential and all other types of development.

The Bill must clearly spell out that **Ecologically sensitive open areas** will be accepted or considered in lieu of recreational open space provisioning.

CHAPTER 8: GENERAL PROVISIONS

Section 53 IT SEEMS THAT THIS SECTION WAS CHANGED AS RECOMMENDED!

It was indicated at our workshop that section 50 may in fact be removed. However, we are not in favour of it being removed but amended to indicate that:

"no development and or registration of any property resulting from a development application shall be done unless and until the local authority has certified that all requirements and conditions for the development applications have been complied with."

Section 54

As a general comment it should be taken into account that it may be unfair and unreasonable toward the legislature to try and comment on the bill without the regulations. Municipalities will tend to be more restrictive in their comments without the benefit of the detail that may be contained in the Regulations. Please refer to our general comments.

Applications for exemption from the bill to allow the promotion of development should be properly considered. When dealing with promotion of development it can only be done within a certain set of criteria as a threshold requirement for granting of exemptions. This process should not in any way interfere; diminish the authority of the decision making bodies established for purposes of development applications.

Section 56

This is unnecessary in so far as local authorities are concerned. We refer you to the general comments and the provisions of section 59 of the MSA.

Section 55

This is a repetition of section 7(a)(vi).

Section 60

Section 60(2) This section cannot purport to overrule the constitutional judgement on the validity of the DFA. The functions of the chapters which allow the submission of conventional development applications have been suspended as per the judgement. Section 60(3) is superfluous.

SCHEDULE 1: MATTERS TO BE ADDRESSED IN PROVINCIAL LEGISLTATION

1. It is not certain whether the list of purposes for which land may be used are "Land Use Zones" or "primary rights. The definitions are very general and if they are for "land use zones" then they will probably be acceptable but if they are "primary rights" then they are inadequate and will cause many problems with their interpretation and implementation. The types of "land use purpose" are too few to deal with all the practicalities of existing land use zones and the issue of over- mixing of land uses.

2. There might be some legal issues of interfering with the independence of municipalities which Legal services will have to comment on.

3. Again, only once the Regulations are available can one comment on the implications of certain sections of the Bill as only then will we see how it affects municipalities and our Land Use Schemes and application processes

SCHEDULE 2: SCHEDULED LAND USE PURPOSES

Schedule 2: the definition of "community purpose "includes a gymnasium – this should be excluded as we include that as a fitness centre under "business purposes ". The definitions otherwise are acceptable as generalisations of the broad meaning of the land use purposes but I don't see why this Bill wants to define it. It should be left up the Provincial and Local legislation to define

Regards

STRATEGIC EXECUTIVE DIRECTOR: CITY PLANNING AND DEVELOPMENT.

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