

12 0915 PCL/2012

CLAUSE BY CLAUSE COMMENTS AND RECOMMENDATIONS ON SPATIAL PLANNING AND LAND USE MANAGEMENT BILL (B14 – 2012) AND RESPONSE BY THE DEPARTMENT

CHAPTER	COMMENTS	SUGGESTIONS FROM STAKEHOLDERS	DEPARTMENT RESPONSE
1	<p>Definitions:</p> <p>Some definitions will need clarity and rewording.</p> <p>S. 4 is very weak need to be redrafted.</p> <p>The roles of national and provincial spheres, in relation to the local sphere need to be clarified.</p>		<p>Definitions will be re-examined and submission recommending changes will be made to the PC.</p> <p>Agreed that roles of each spheres of government need to be clearly defined. This will be done in the guidelines.</p>
2	<p>Development Principles, Norms and Standards</p> <p>Sec 7(a) (i) to refer explicitly to intention to address historical imbalances based on race segregation</p> <p>S 7 (a) (iii)- redress in access to land should be based on SDF and not the zoning scheme.</p> <p>S 7 (a) (vi) may contradict S 25 of the Constitution</p> <p>S 8 – is the Minister going to consult with municipalities before prescribing norms and standards?</p> <p>Timeframes must be provided for in regulations.</p>		<p>Noted for consideration</p> <p>The principle must be implemented to give effect to spatial justice.</p> <p>This section does not contradict the Constitution. The principle must be implemented to give effect to spatial justice</p> <p>The Bill provides for consultation with municipalities and all organs of state.</p> <p>These will be addressed on case by case bases as 'one-size fit all' situation cannot apply.</p>

3	<p>Intergovernmental support</p> <p>To address poor capacity among municipalities, the Minister must provide support and assistance within available resources.</p> <p>It is not clear how the support will be provided under section 10 (1) – (4).</p> <p>S 9(3) :The is no need for the Minister to prescribe procedure for resolving and prevent conflict between SDFs at different spheres as already provided by the Intergovernmental Relations Act (Act 13 of 2005).</p> <p>Section 10: Matters in schedule 1 for provincial legislation are areas of municipal functional competence and therefore seen as an interference of province on powers of municipality.</p> <p>S 10 (1) (b) Provincial interests need to be clearly spelt out.</p>	<p>Bill should allow for functions to be gradually transferred to municipalities</p> <p>The DRDLR must conduct municipal capacity assessment and ensure that the necessary capacity is developed to implement the provisions of the Bill.</p> <p>Support should be provided if requested by relevant local authority or if it is clear that it is not in position to deliver on its obligation.</p>	<p>Department is currently investigating support and capacity requirements to prepare for implementation of the Bill.</p> <p>National support to provinces and municipalities is primarily in form of funding for legislation. SDFs, LUSs and other required spatial plans will be available as need arises.</p> <p>Provinces and municipalities will be able to request assistance.</p> <p>Conflict resolution provided in this section is consistent with the Intergovernmental Relations Act.</p> <p>Provinces have concurrent powers to regulate matters provided for in Schedule 4 and 5 of the Constitution.</p>
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4	<p>S 10 (2) confusing and should be reconsidered.</p> <p>Spatial Development Frameworks</p> <p>Chapter 4 need to be reviewed. It is confusing for each sphere of government to produce its own SDF.</p> <p>Clause 18(3)(b) which permits the Minister to declare a Municipality a Region if the municipality fails to amend or review its SDF is seen as usurpation of municipal executive authority by the Minister.</p> <p>S 12(1) : there should be no qualification for public participation</p> <p>Section 20 is regulating for municipal SDF which are already covered as components of IDPs in MSA.</p> <p>S 21 contents of municipal must include climate change responses</p> <p>Section 21(2) contradict section 36 of Municipal Systems Act (MSA)</p> <p>Section 22 (3) gives the Premier the authority to take charge to ensure consistency of municipal SDF and provincial SDF without consulting municipality This is undermining the exclusive power of municipality over municipal planning. The 5 year cycle for the preparation of National,</p>	<p>Only municipality should produce SDF after consultation with the other spheres.</p> <p>Need to align with MSA</p>	<p>National and Provincial SDFs are necessary to ensure that matters of national and provincial interest are dealt with. SDFs are also necessary at national and provincial sphere to ensure that spatial planning occurs for the country as a whole.</p> <p>Section 20(2) of the Bill states that municipal SDF must be prepared as part of the municipal IDP in terms of the MSA.</p> <p>Noted for consideration</p> <p>There is no contradiction of the provisions of the MSA relating to SDFs</p> <p>Department will consider and make further submissions</p>
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	<p>Provincial and Municipal SDFs and Land Use Scheme are not feasible need to be reviewed.</p> <p>It is not clear how the Bill will ensure alignment of the national, provincial and municipal SDFs.</p>	<p>A long term for reviews</p> <p>Need to have SDF guidelines</p>	<p>Timeframes including review cycles will be addressed in the Regulations.</p> <p>This will be addressed as part of support and monitoring function of national government.</p>
5	<p>Land Use Management</p> <p>The Bill fails to recognise the historical impact of mining on communities, which creates a need for the Bill to make special consideration when applications for land use change and land development are made in the context of mining.</p>	<p>Clause 12(1) (n) should include a statement that cognisance should be taken of the significant impact of mining on natural resources.</p> <p>Rezoning of land for mining purposes should be subject to strict scrutiny and special considerations should apply to such applications.</p> <p>Mining as national interest should be elevated to ministerial level and all applications relating to mining should be submitted to the Minister of Mineral Resources.</p> <p>All land development applications to be submitted to the Minister of Mineral Resources because they have potential to impact on mining.</p> <p>Therefore proposed changes in sections 27(1), 28(1), 29, 30, 45,</p>	<p>Mining, like other land use , is subject to regulation in terms of the Constitution and other legislation and hence is subject to municipal planning. Therefore, mining is subject to the full provisions of the Bill.</p> <p>The Department has commissioned research on national interest.</p>

	<p>Agriculture is of national and provincial competence and therefore may not be dealt with by municipal planning.</p>	<p>52, 55, 56</p> <p>The Minister of Agriculture, Forestry and Fisheries should be consulted on all decisions relating to productive agricultural land</p>	
<p>5</p>	<p>Land Use Schemes</p> <p>The Bill does not provide for adequate public participation in the decision making processes especially for traditional communities.</p> <p>Sec. 24: obligates municipalities to adopt and approve a land use scheme within 5 years of commencement of this Act. This is not feasible.</p> <p>Sec 24(4) need to be revised to take into account relevant provisions under the MSA Sec 25(1).</p> <p>Sec 26(1)(b) which provides for replacement of all existing land use schemes with new schemes is contradicting with S 26(6) which contemplates that existing land use schemes will not be repealed or replaced by new schemes</p> <p>S 26(4) and S 28: Both deal with amendment of land use schemes. It is not clear what is the distinction is between the two types of amendments. More clarity is needed on the</p>	<p>A reference to health and safety legislation should be made as a requirement for land use schemes, in particular a provision should be made under Section 24(2).</p> <p>Food security to be included as clause 25 (1)(e) as one of factors to be promoted when use and development of land is determined.</p>	<p>The Bill achieve this through S 12 (1) (h), S 23 (2) and S 24(2)(c).</p>

	<p>intention of S 28.</p> <p>Sec. 27: Timeframes for review of land use schemes are not feasible.</p> <p>In S 28 distinction between scheme amendment and rezoning is not clear</p> <p>S 29 and sec. 30: more details required and should be covered in the provincial legislation.</p> <p>In S 32 reference to 'may' should be changed to 'must'.</p> <p>S 32 ((5) need to be reviewed to ensure it does not fall foul of the constitutional right to privacy.</p> <p>Sec 33 (1): national legislation should enforce a joint publication and joint comments to avoid delays.</p> <p>Sec 35 (2) clarification is needed as to what types or categories of land applications that which can be heard by officials.</p>	<p>Reviews of MSDF and PSDF should be every ten years instead of five years.</p> <p>The Bill should contain provisions to deal with situations when land use schemes are not reviewed.</p>	<p>This will be determined by municipalities</p>
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6	<p>Municipal Planning Tribunal</p> <p>Sec 36 (1) (b) the appointment of external members to the Tribunal is not acceptable. Payment of external members makes the Tribunal system expensive and some municipalities might not have persons from private sector to serve on the tribunal.</p> <p>Sec 36(1) (b) does not require that members of tribunal should be representative to ensure environmental, social and economic matters will receive due considerations.</p> <p>Section 36 (2): The exclusion of municipal councillors to be members of the Tribunal 9 means that the Bill contradict the Municipal Systems Act (s.79 & 80), which makes provision for the Tribunal to consist of political representatives or councillors.</p> <p>The format proposed in the Bill gives greater decision making power to private sector due to its ratio.</p>	<p>It should be discretionary not mandatory for the municipality to appoint outside members to the Municipal Planning Tribunal as this will have cost implication for the municipality.</p> <p>Tribunals should deal only with appeals while Municipal Council should deal with applications and this will cut cost.</p> <p>Sec 40 (2) it should be stated that at least one member of the tribunal should be a registered planner with more than 10 years.</p> <p>Non-state members should outweigh municipal officials in municipal planning tribunals.</p>	<p>Making decision on development application is an administrative function which occurs within the policy framework established by Councillors (SDF) and therefore is best dealt with by officials/appointees of Council.</p> <p>Municipal planning tribunals operate under delegated authority from municipal council. Councillors will control policy making process (SDF and spatial policy).</p> <p>Composition of the Tribunal will be determined by municipalities in accordance with the provisions of the Bill</p>
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	<p>S 40(7) (b): use of ambiguous terms such as “reasonable” conditions should be taken out of the Bill.</p> <p>S 40(9) “undue delay’ should be clearly spelt out</p> <p>S41 (2) (c) : consolidation should be /removed, which will reduce cost to the investor and landowner.</p>	<p>New clause: S 42(4) to introduce a provision for consent of mineral holders to town planning schemes</p>	
6	<p>Timeframes (S 44)</p> <p>There are no timeframes in the Bill to deal with applications.</p>	<p>There should be timeframes for applications. There should be consequences for not keeping timeframes.</p> <p>Time frames for deciding on application should not be regulated instead should depend on the circumstances for approval</p>	<p>This will be addressed in the Regulations</p>
	<p>Provision of engineering services (s. 49)</p> <p>Definition of engineering services does not include private roads.</p>	<p>Definition engineering services need to be expanded.</p> <p>Provision on development charges need to be discussed with National Treasury.</p>	<p>The National Treasury are currently busy with policy on this issue.</p> <p>These provisions will require review to ensure the Bill does not enter the realm of Money Bill.</p>
	<p>The use of “fair and reasonable costs” in section 49(4) is likely to create unnecessary complications as no guidance is given of how</p>		

	<p>one arrives at fair and reasonable costs. This impact on what municipality can get from development charges.</p> <p>Uniform and rationale standards for engineering services should apply.</p> <p>Provision is not made in instances where agreement cannot be reached.</p>		
6	<p>Appeals (s. 51)</p> <p>The Bill provides only for internal appeal process to the Municipal Executive Authority, which means is an appeal to the same body that made the decision.</p> <p>It is too much administrative burden on 'executive authority' to deal with appeals for the whole jurisdiction of municipality.</p> <p>Appeal process legislated through section 62 of MSA creates dual appeal process that will cause confusion and delays.</p> <p>No right of appeal unless appellant can prove a right that has been adversely affected (clause 51(5)). This violates the rights of appellant.</p> <p>The Bill gives right to appeal to decision taken by Tribunals but it says "no variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision (clause 51(3)). This is undermining the</p>	<p>The following has been suggested:</p> <ul style="list-style-type: none"> • Inter-municipal appeal tribunal consisting of officials from different Councils. • Provincial Planning Appeal to decide on all appeals. • Independent tribunal of persons with qualifications in professions like planning, engineering, land surveying, environment management and law. • It should be left in the discretion of municipalities to decide on the format of appeals. <p>The provision should be deleted</p>	<p><i>This section requires review. The Department will make submissions with recommended changes.</i></p> <p>Noted for consideration.</p>

	<p>right to appeal</p> <p>There is no provision made for appeal against the decision by municipality to adopt scheme or amend a scheme.</p> <p>There is no appeal against the decision taken by authorities.</p> <p>Are the appeal procedures applicable to parties aggrieved by an adopted SDF?</p> <p>No provision is made for provincial tribunals on land use applications of provincial interests</p>		
6	<p>Application affecting National Interest (Sec 52)</p> <p>The Bill does not adequately define or provide guidance on the nature, scale or intensity of elements that may be considered as part of provincial planning/interest or national interest.</p> <p>Sec 52 (3): In terms of this provision when an application is of national interest, the applicant must refer it to the Minister, which implies that the decision whether the application is of national interest vest with the applicant.</p> <p>Clause 52 (5) (b) says that when an application involves issues of national interests the Minister</p>	<p>National interest must be clearly spelled out</p> <p>The triggers of a development application to constitute national and provincial interests need to be clarified.</p>	<p>The Department has commissioned a research on the intersection between 'national interest' and land use.</p> <p>This matter will also be addressed in norms and standards, and in the National SDF.</p> <p>Procedures for alignment of authorisation and joint decisions are still to be determined in discussion with relevant</p>

	may decide on such application.	need to be referred to the Minister and the Minister may join as a party to the application instead of taking decision.	departments.
7	Regulations (s. 54) An opportunity should be given to comment on the proposed regulations to be made by the Minister. Regulations should have been made available in parallel with the Bill	Sec 52(5) (b) should be deleted	Draft regulations are currently being prepared
7	Exemptions (s. 55) Should there not be public participation in this process? Sec 55: organ of state to be added Public spaces/parks in less formal townships should be exempted from environmental impact assessment. Tenure upgrades or process to obtain title to existing tenure rights should be exempted from provisions of the Bill. Land use for essential services should be exempted from the Bill. Services that are offered by state-owned enterprises should be listed as of national interest and therefore exempted from the		Exemptions from provisions of other legislation may not be granted in this Bill

	legislation.		
7	Delegation (s. 56) This is open to wide interpretation and possible abuse. This is unnecessary as it is covered in sec 59 of MSA. The power to appoint a tribunal should not be delegated to an official.		
	Unclear what types of application will be dealt by officials		This will be dealt by municipalities.
7	Offences and Penalties (S 58) The enforcement provisions are not enough	The Bill should have a dedicated chapter on enforcement	
7	Transitional Arrangements (S 60) Chapter V and VI of the DFA have been declared unconstitutional The Bill has no clear arrangements put in place to deal with development applications that were submitted in terms of DFA and were not finalised by 18 June 2012	Any regulations pertaining to chapter V and VI of the DFA should be deleted. A provision, which states that DFA applications that were approved prior to 17 June 2012 be dealt with and finalised in terms of SPLUMB should be incorporated.	Interim guidelines and transitional measures are being prepared by the department
	Transitional arrangements provided with regard to dealing with existing property rights shall create claims against the local authority.	Existing rights should remain in place for a period of 15 years.	

		An adequate transition period of two years is required to ensure that all process or requirements completed before the Act become implementable	
Schedule 1	Matters for Provincial Legislation Provides wide powers of interference by provinces in municipal planning The inclusion of "spatial planning" as one of the aspects which provinces may legislate on will provide for a third process of forward planning documentation over and above the MSA and the Bill g (iv) Subdivision of agricultural land is done through the Administration of Subdivision of Agricultural Land Act, 1970 (Act 70 of 1970), which confers powers to make determination on agricultural land to the Minister of Agriculture, Forestry and Fisheries. Y need to be reviewed to meet current legislation	It should be left to the MSA to legislate regarding spatial planning. Prime and unique agricultural land should not be subdivided.	Provinces have concurrent powers to regulate matters provided in Schedule 4 and 5 of the Constitution.
Schedule 2	Municipalities should have a choice to adopt this list or compile their own.		Schedule 2 is intended to benefit municipalities that do not have schemes
	Is this the full list?		The list may be added to Schedule 1 (0)
Schedule 3	Since the provision for removal of restrictions in the Bill is not adequate, consideration should be given as to whether the Removal of Restrictions Act, should be repealed simultaneously with enactment of Bill, or at all.	Identify all pieces of legislation that are currently used to regulate development planning	

	<p>The Bill does not repeal old provincial apartheid legislation and therefore creates parallel process.</p> <p>The Less Formal Township Establishment :Act (Act 70 of 1970) Black Community Development Act</p> <p>Upgrading of Land Tenure Rights Act, 1991 (Act No. 112 of 1991) Provision of Land and Assistance Act, 1993 (Act No. 126 of 1993)</p>		<p>Noted for consideration as part of transitional measures and provincial legislation</p>
	<p>Commencement (S 61)</p> <p>S 61(1): In order make sure that all the necessary requirements are in place before commencement of the Act, the Act should come into operation on the date determined by the Minister</p>		