



## Local Government Brief: 04/2012

*Local Government Briefs are bi-weekly electronic updates for municipalities on critical areas of law, policy, facts and data affecting the sector.*

### An update on the Spatial Planning and Land Use Management Bill

#### 1. INTRODUCTION

The purpose of this brief is to update municipalities regarding the processing of the Spatial Planning and Land Use Management Bill and also advise on the parliamentary submission that was made by SALGA, municipalities and other stakeholders.

#### 2. BACKGROUND

Since 1994, there have been various initiatives to reform the legislative framework within which land development takes place within the republic and give effect to the spatial planning and land use management principles as reflected in the White Paper on Spatial Planning and Land Use Management. Various versions of the draft land use management bill have been produced over the past eight years. On 6 May 2011, the Department of Rural Development and Land Reform released a draft Spatial Planning and Land Use Management Bill and called for public input until 6 June 2011. SALGA undertook a consultation process that included two workshops (29 March 2011 and 2 June 2011 at the Vulindlela DBSA and Sandton library respectively) on the draft bill with a number of stakeholders that included a cross-section of municipalities, sector departments, and provincial structures of SALGA, South African Cities Network and the South African Planning Institute. Furthermore, SALGA established a consultative forum comprising of a number of municipalities, to provide input on the draft Bill and deal with further the processes leading up to the finalization of the Bill. As part of the consultation process, SALGA developed and submitted comprehensive comments on the first version of the draft Bill.

In March 2012, the Department of Rural Development and Land Reform released a second version of the revised Bill that incorporated some of the key issues that were raised by the local government sector. However, besides the “provincial road-shows” that were undertaken by the Department of Rural Development and Land Reform, there was no opportunity made available to engage the Department on the extent to which the key issues that were raised by the local government sector were incorporated into the revised Bill. SALGA and the South African Cities Network undertook a consultation process with

municipalities to gauge their responses to the revised Bill and the key concerns that still need to be addressed were highlighted and formed the basis of SALGA's submission to the portfolio committee on Rural Development and Land Reform.

### **3. DISCUSSION**

The Portfolio Committee on Rural Development and Land Reform released a notice calling on interested and affected parties to make submissions on the draft SPLUMB and also indicate whether any party wishes to make oral submissions to the portfolio committee. The closing date for submissions was 10 August 2012 and the hearings took place on 21-22 August 2012. SALGA timeously submitted written submissions and also made oral representations to the portfolio committee on 22 August 2012. Besides the submissions that were made by SALGA, Tshwane Metro, Johannesburg Metro and eThekweni Metro also made oral submissions that resonated with the submissions that were made by SALGA. It must however be noted that even though the draft Bill will have a significant impact to all municipalities and more so to the small and under-capacitated municipalities. There has been poor participation in this process by low capacity municipalities. It is therefore imperative that SALGA at provincial level seriously consult with municipalities in order that they can input into the NCOP process as the last chance to raise issues and suggestions. The broad principles that informed SALGA's submission to the Portfolio Committee can be summarised as the need to have legislation that will facilitate the:

1. Rationalization of the planning legal framework and repeal or provide guidance on the repeal of old order planning legislation that is administered by different spheres of government.
2. Integration of development planning processes as well as development planning outcomes of the various spheres of government responsible for development planning
3. Strengthen and coordinate intergovernmental spatial planning system and facilitate inter-municipal and inter-provincial spatial planning
4. Provide more clarity on what aspects of planning will be regulated and legislated at the provincial sphere of government, bearing in mind the constitutional court ruling on the Development Facilitation Act.
5. Alignment and rationalization of multiple decisions on development planning and elimination of red tape
6. Determination of basic national norms, standards and principles that should provide a decision making framework for all spheres of government responsible for development planning
7. Differentiation of municipal planning roles and responsibilities that is adequately nuanced to deal with planning challenges facing different categories of municipalities.
8. Provision of a framework for reducing fragmentation, red tape and streamline planning processes associated with sectoral planning permissions required in terms of other laws (NEMA, Act 70 of 1970, National Heritage Resources Act, National Minerals Resources Act)

It was therefore the expectation of SALGA that the draft SPLUMB would at least address or provide guidance on how the above issues would be addressed as part of the broad

legislation reform initiative. There is however no evidence in the revised Bill that the above issues have been adequately addressed. Furthermore, the revised Bill appears not to have made serious attempts to deal with matters that were previously raised by the local government sector which if not adequately addressed, will compromise the ability of municipalities to perform their constitutional functions. In the absence of an explanation as to why some of these key issues that were raised by the local government sector were not incorporated into the revised Bill, it is important to reiterate these issues and also indicate the possible implications for development planning.

Whilst the Department of Rural Development and Land Reform conceded that there are some fundamental issues that were raised by the local government sector that still require attention (for example, appeals tribunal, roles and responsibilities of each sphere of government and the proposed transitional arrangements), not all the key issues have been adequately addressed. It is therefore important that SALGA at provincial level continue to raise the outstanding issues during the NCOP public hearings, the date of which is still to be announced.

Until such time that the Bill has addressed the key issues that were raised by the local government sector, SALGA should continuously seek opportunities to engage on the contents of the Bill before it becomes law and ensure that the local government sector's concerns are adequately addressed.