SALGA

South African Local Government Association

SALGA comments on the first draft: Spatial Planning and Land Use Management Bill (June 2011)

Introduction

The draft Bill is a significant improvement on the previous Land Use Management Bill. It is more sensitive of municipalities' role as planning authorities, less hierarchical and generally more sensitive to the concept of autonomous but inter-dependent spheres of government. However there are still several problematic areas of the Bill that require further attention.

The comments made in this document are not comprehensive, both for the reasons provided above as well as the deliberate attempt to limit comments to issues and topics which are of obvious concern to municipalities. In this regard, the comments made are mainly of a general nature, except in the section which deals with some very obvious questions or concerns which are contained in the text of the Bill.

Context in which SALGA views the Bill

The Constitution provides for national, provincial and local governments which are distinctive, interdependent and interrelated. Each sphere of government must respect the constitutional status; powers and functions of the other spheres and that each should exercise its powers and perform its functions without encroaching on the geographical, functional or institutional integrity of another sphere.

It is important to bear in mind that the new constitutional order conferred "a radically enhanced status on municipalities" which is "materially different" from the pre-constitutional era, firmly establishing local government's autonomy. In fact, the Constitution provides that a municipal council has the right "to govern on its own initiative the local government affairs of the local community". Furthermore, in exercising the municipality's executive and legislative authority, the council has a right "to do so without improper interference".

Thus, the institution of local government as a sphere of government and the powers of municipalities are recognised and protected in the Constitution. The mandate of developmental local government bestowed on local government should result in interpretation (of functions) that recognises the need for sufficient municipal

discretion in regulating Schedule 4B and 5B matters while simultaneously maintaining the need for national and provincial oversight and regulation. This context is important because any legislation or draft must reflect these principles.

The following municipal interests therefore guide SALGA in the reading of the Bill:

- Constitutional allocation of powers and functions
- Constitutional Court interpretation re municipal planning
- The role of elected councillors
- Location of decision-making and appeals related to municipal decisions
- The role and location of spatial planning frameworks
- Common and definitions
- Alignment between land use management legislation and other municipal legislation
- Differentiated implementation and application based on municipal capacity
- Capacity of municipal planners to implement the legislation
- Intergovernmental alignment in relation to meeting municipal objectives.

Consultation

Whilst the urgency for new legislation as well as the time frame within which the new legislation has to be promulgated is well understood, it is SALGA's view that given the importance of the proposed legislation to the planning function of local government, consultation with the local government sector is an absolute necessity, failing which the Bill will be subject to challenge on the grounds of section 154 of the Constitution. Consultation has a very specific and commonly understood meaning, flowing from judicial interpretation. The timing of commenting period coincided with the local government elections and the subsequent establishment of new municipal councils, in effect nullifying the object of section 154. It would have been beyond reproach had the Bill been advertised after the constitution of the new Councils in order to allow the new councilors an opportunity to engage with the proposals in the draft Bill. Consultation within SALGA has been limited to engagement with the metropolitan municipalities with support from the South African Cities Network and the Development Bank of Southern Africa; the circulation of a previous version of

this document to SALGA regions and a meeting with some municipalities. This is insufficient in view of the extent of its membership as well as the complexity associated with this Bill. SALGA has requested further consultation with the local government sector that will allow for comprehensive comments from the municipalities (and more specifically newly elected Councils) must be provided for.

Attached is a document which arises from a discussion between SALGA, the South African Cities Network and the Development Bank of Southern Africa. The document contains specific issues which SALGA intends pursuing and we recommend that the following issues form the basis for further consultation that must inform the final bill:

- Definition of Provincial Planning (in the context of Schedules 4 and 5 of the Constitution) that is consistent with local government's understanding of the Constitutional Court's definition of Municipal Planning.
- Determination of an appropriate decision making and appeal system, having regard to the provisions of the Municipal Systems Act
- Support systems (including shared services models) that will be required for under-capacitated municipalities to effectively implement the bill
- Development of an effective and robust decision making criteria on land development applications that give expression to the spatial planning and land use management policy objectives
- Development of an effective land use enforcement regime

Decision making, roles and functions of the three spheres of government

- The first point of departure must be the Constitutional Court ruling on the functional competencies of local government as well as the clarification of what constitutes "municipal planning". The "municipal planning" functions that were confirmed by the Constitutional Court as being the exclusive competences of local government must be articulated as such in the draft Bill. The proliferation of SDFs at various levels will lead to confusion and interference into municipal planning

- The Constitutional Court ruling must find expression in the decision making structures with regard to the initial decision on land use and spatial planning as well as any appeal bodies that may be proposed. In other words, the draft Bill must provide for decision making structures that will not result in the provincial sphere of government making decisions on municipal planning competencies by adjudicating on planning appeals. The current appeals proposal in that draft Bill still leaves room for the provincial sphere of government to get involved in municipal planning. The broad criteria set out in the Bill for the submission of appeals to the Provincial Appeals Tribunal as well as the lack of definition of what constitute Provincial and National interests can easily result in the provincial and national sphere of government getting involved in municipal planning matters, which is patently unconstitutional.

- The grounds for appeal cannot be formulated until the planning principles, norms and standards have been articulated and included in the Bill, as the norms and standards to be complied with will inform the grounds for appeal.

- In any event, the grounds for appeal to the provincial sphere that are listed in section 36 of the draft Bill are open to interpretation as to whether they are too restrictive or too broad and for that reason they can easily be abused. This is particularly important in view of the fact that there is a view amongst municipalities that their should a limited role for provinces in the municipal planning sphere. If a province is expected to be an appeal authority, then it cannot at the same time be an approving authority for planning and land use management in municipalities. This view does recognise the role of provinces in approving municipal SDFs as part of the approval of IDPs as envisaged in the Municipal Systems Act.

  All three spheres have responsiblities in planning, but the impact is physically located in the municipal sphere. An alternative approach would be to identify those activities/actions that will have a bearing on the criteria listed in section 36 of the draft Bill, and test them against the meaning of municipal planning as per the Constitutional Court judgement. The matters that fall outside of the meaning of municipal planning would therefore need to be dealt with by the

appropriate sphere of government, ***after consultation*** with the relevant municipality. In view of the need to have differentiated requirements based on municipal capacity and spatial locations (as national and provincial planning would be expected to determine), the role of provinces in municipal planning must be based on support and enablement rather than on the basis of intervention.

- Whilst the Constitutional Court ruling provided clarity on the role of provinces and municipalities in managing development planning, not all municipalities have the competencies or capacity to perform their constitutional functions. The proposal in the draft Bill for municipalities to form joint tribunals is a positive step towards acknowledging the different capacity issues affecting local government. The draft Bill therefore provides for some form differentiated decision making system that acknowledges ***the real capacity*** constraints that exist in certain municipalities, especially in those municipalities where the provincial sphere of government is performing municipal planning. The draft Bill must make provision for unambiguous provincial oversight and support role especially to under capacitated municipalities.

- The roles of various spheres of government in spatial planning at different levels must be clarified. The reference to consistency and alignment of plans at various levels is noted, but the practical mechanics of achieving that need to be articulated. The current Bill gives an impression that there is a hierarchy of plans and that municipal SDFs must be informed by Provincial SDFs, thereby not adequately acknowledging that Provincial SDFs must simultaneously be informed by local dynamics and municipal planning. Perhaps, the term SDF must only be restricted to municipal spatial plans and the planning that is done at Provincial and National level should refer to strategic planning in order to eliminate confusion. Or perhaps the Bill should refer to the PSDF and the NSDP, which themselves cannot be prepared with regard to and the involment of municipal planning priorities.

- While the Constitution enables each sphere of government to manage it's affairs with a degree of autonomy, this right is not unchecked. The spheres of government are interdependent on each other and as such are expected to act co-operatively, with the overall role of national government well-recognised. It is simultaneously an established principle that where possible that sphere of government which is closest to the beneficiaries of a particular service should be responsible for the provision of that service in terms of Section 156(4) of the Constitution. The other spheres, insofar as they have some responsibility have mostly legislative and policy functions and few, if any, implementation functions. What this means in practice is that a number of responsibilities at the different spheres will need to be reviewed with municipalities being the primary administrators of land. The following points are made for consideration:

- National government being the custodian of land should:
  - · Establish the criteria for using land for settlement, primary production and eco-system protection
  - · Provide the mechanisms needed to ensure co-operative and accountable government should be provided by national government
  - · Give expression to the above two points in national planning legislation

- The role of Districts in Spatial Planning needs to be clarified. The Bill refers to municipalities without due regard to the two tier system of local government. District and local municipalities have different relationships, roles, responsiblities and capacities which inform the type of engagements between them. This needs to be recognised in the Bill.

- The role of sector departments in planning as well as how their plans must find expression in the various spatial plans need to be emphasized in the draft Bill.

- The Bill or the regulations must make provision for maximum time frames within which land development applications must be considered as well as the maximum time frames that interested and affected parties (including

government departments) have to comment on development applications. Having said that, the maximum timeframes applicable to municipalities can only find application once all other relevant authorisations from national sector departments (such as ROD following EIA, water licences etc) has been granted, as all these aspects need to be considered by the municipality prior to the approval of change in land use.

Development Principles

As the Bill seeks to establish new principles, norms and standards to be used in considering land use applications, these principles need to be clearly defined in the Bill itself and not in regulations as contemplated because it is clear that the principles, norms and standards differ from the planning principles and approaches as contained in the current fragmented provincial legislation and will therefore require a change of approach to land use applications by all decision makers. In addition, policy change should be contained in original legislation and cannot be done in regulations (secondary legislation).

Land Development Procedures

The Bill in the preamble seeks to reduce duplication of procedures relevant to land development applications. This seems, correctly, to be in recognition of the fact that land use management is a primary municipal function. However, dealing with multiple processes affecting land use management decisions that hinder effective management and processes arising from Environmental Management/Heritage/Coastal Management legislation are not explicitly captured in the Bill. The initial processes with regard to public consultation that is required in terms of the environmental legislation must at least be streamlined in such a manner that will shorten the process and allow interested and affected parties to apply their minds to a complete package as opposed to responding to certain sections of the development application as advertised in terms of a particular piece of legislation.

The draft Bill must be the key instrument that regulates spatial planning and land use management. In order to ensure that the new legislation gives clear direction to land development challenges as outlined in the white paper on

spatial planning and land use management, it will be imperative that ALL legislation that has specific requirements that need to be met before land development can occur, is scrutinized (where necessary, repealed) and the necessary positive provisions are either incorporated into the new legislation or at least aligned with those of the new legislation in so far as they relate to both procedural and substantive issues as well as decision making structures.

Examples of such legislation includes, LFTEA, RORA, MSA, NEMA, NHRA, Act 70, Legal succession to SATS, various Provincial ordinances and former homelands legislation. The Bill must also take into account the provisions in the Transport planning legislation that may have a bearing on land use planning. The provisions of the Subdivision of Agricultural Land Act (70 of 70) need to be taken into account in so far as they have a bearing on land development

The devolution of delegations in cases where the other legislation is administered by a different sphere of government must be considered. (municipalities with competencies to perform certain functions must be ”accredited” and not be placed within the same category as under capacitated municipalities, requiring support)

National and Provincial interests

The concepts of national and provincial interests must be defined upfront. A list of the triggers for a land development application to constitute national or provincial interest needs to be developed. The provision for an applicant (see section 43 (3)) to determine whether an application affect national interests is not practical and can easily be open for abuse. Clarification on what constitutes provincial and national interests is extremely important as it has ramifications on the role and function of the proposed decision making bodies.

Differentiation of Municipalities

Whilst the draft Bill indirectly acknowledges the capacity constraints that may exist in certain municipalities, the principle of differentiation in so far as the planning requirements, roles and function of municipalities still requires major attention. For example, the SDF requirements outlined in the Bill seems to adopt a one size fits all approach which may indeed turn out to be a major constraint for under-capacitated and smaller municipalities. Besides the preparation of various planning instruments such as SDFs and land use schemes, the actual implementation and administration of these planning instruments need to underpin any differentiation framework in order to ensure that the new legislation will be practical and be capable of implementation.

Land Use Scheme and Existing Land Use Rights

The Bill attempts to achieve an alignment between spatial planning and land use schemes (zoning/town planning schemes), which is commendable. However, not enough attention is given to the question of how to deal with existing real rights. The proposal that the new land use scheme will supersede real rights, even in title deeds, is unlawful, especially as the Deeds Registries Act is not being amended or partly repealed by this Act. A land use scheme cannot amend a provision contained in a title deed duly registered in the deeds office.

Whilst at some point, unutilized land use rights have to fall away, a period of five years after the act coming into force appears to be unreasonable. There is a need to balance the protection of existing land use rights and the need to align land use schemes with spatial planning. Perhaps a 15 year period as opposed to a 5 year period maybe a reasonable time frame, to exercise any existing rights before they fall away.

Repeal of Parallel Legislation

The proposed repeal of legislation as contained in schedule 3 of the Bill is welcome. However, the list contained in schedule 3 is not comprehensive as it is not clear as to the operation of other legislation such as LFTEA, the Ingonyama Trust Act, the BCDA Regulations and other legislation that is being used to regulate land development. The repeal of legislation that makes provision for shortened procedures and not incorporating such shortened procedures in the draft Bill, is tantamount to throwing out the proverbial baby with the bath water. Any gaps that will be created by the repeal of existing legislation must be sufficiently addressed in the draft Bill.

There are a number of areas that the Bill seeks to address, that are also dealt with in terms of the Municipal Systems Act, such as SDFs, decision making structures and the appeal system. In order to avoid duplication and parallel processes and procedures, the Bill needs to cross reference those provisions in the MSA and where necessary repeal some duplication or those provisions that will be in conflict with the Bill.

While it is accepted that this proposed legislation cannot repeal provincial ordinances, when it is promulgated, a number of applications in terms of these ordinances and the other legislation being repealed would have been submitted. The Bill needs to provide direction to all authorities on how these are to be dealt with in the interim while the new institutional arrangements are being established.

In this regard, reference is made to the need to give effect to the objectives of the 2001 White Paper on Land Use Management and Spatial Planning so far as streamlining of legislation and an attempt to achieving uniformity is concerned and the relationship between Provincial and National legislation

Practical implications

Given the Constitutional Court ruling on the unconstitutionality of certain sections of the DFA and the subsequent proposal to repeal the DFA, it appears as if the void that will be created by the repeal of the existing legislation will in actual fact be closed by the enactment of Provincial planning legislation and not by the draft Bill. Schedule 1 of the draft Bill that deals with “matters to be addressed by provincial legislation” deals with most of the mechanics of planning that are going to have an impact on municipalities and the development community when it comes to land development management. There is a real potential problem in that, the time lag between the enactment of the new act and the promulgation of provincial legislation may indeed create a legislation vacuum that is likely to create confusion. The fact that the draft Bill leaves a lot of technical and practical key issues as matters that should be dealt with in the provincial legislation, means that, the draft Bill cannot be used as default legislation. In the absence of the provincial planning legislation coming into force, the repeal of the existing legislation will therefore be highly problematic.

The roles of the Registrar of Deeds, the Surveyor-General and departments such as Minerals and Energy as key players in land use management and records-keeping need to be clarified

Development Assessment Criteria

The decision-making system must provide for efficient decision making processes that balance the need for public consultation and the need for “quick decision making”. It is assumed that such details will be dealt with in the Regulations to follow and or subsequent provincial legislation.

Differentiated decision making process especially when it relates to informal settlements, key land development such as human settlements, “emergency situations” and certain infrastructure projects must be included in the draft Bill. The draft Bill must therefore make provision for provision for shortened procedures in certain cases and those cases need to be clearly identified.

The Bill must make provision for practical and relevant development assessment criteria that speaks to the strategic national intent as articulated in the White paper on Land Use Management and Spatial Planning. In this regard, the need to remove parallel assessment processes and the need for consistent development assessment criteria are important. However, the development assessment criteria must be robust enough so as to avoid their fickle application in almost any land development situation. In this respect, what is required is a framework which advises the spheres on assessment procedures based on typical as well as atypical applications, merging of duplication processes, time-frames for assessment and capacity based processes.

An approach that requires a development application to be assessed via a 'series of sieves' that move from the broad goals and objectives to site specific issues must be considered. The City of Johannesburg's indices for Sustainable Human Settlements maybe worth considering when developing the assessment criteria.

Municipal Tribunals

The proposal for the establishment of Municipal Planning Tribunals that excludes political office bearers is problematic, given that the provisions of legislation which govern municipalities which provide for them to establish committees that can be delegated to deal with the same matters as proposed for the Planning Tribunals. In particular, section 79 committee is best placed for this purpose. The ***automatic*** exclusion of councillors from council sub-committees raises constitutional issues in view of the fact that the council can be sued for decisions arising from the Tribunal.

Land use management is about the allocation, alteration and removal of rights. This is fundamentally a political activity and cannot be removed from a municipal political decision-making process. Elected officials have fiduciary responsibilities in terms of the suite of municipal legislation. The Bill takes away the right to make decisions, but does take away the obligations of councillors. If the intention is to provide greater civil society participation and better insights into municipal land use decisions, then the Bill needs to describe these appropriately. If councillors are not permitted to serve on a Municipal Tribunal

then the Tribunal should either be an advisory body or the Council of the municipality should be able to hear appeals against a Tribunal decision.

An alternative approach would be for the Bill to make it clear that municipalities can set up decision-making structures as provided for in terms of the provisions of the MSA thereby allowing the flexibility for municipalities as to whether the tribunals will exclude elected office bearers or will include both officials and political office bearers. Consistent with the need for flexibility and regard to municipal capacity, it will be useful for the Bill to provide guidance or at least provide for the conditions under which these structures would be required. In this regard, municipal planning capacity, local planning instruments and local conditions in general should play a role. Recognition should also be given to the fact that district municipalities might also have a role to play.

Removal of Restrictions Act

The Removal of Restrictions Act was promulgated to avoid land-owners having to approach the courts to remove title deed restrictions. This Bill, in repealing the RORA, does not provide any alternative which means that land-owners will once again have to resort to the courts. The Bill must provide some clarity and make provision for a process to be followed in the removal of title deed restrictions, simultaneously with the change in land use relating to specific property, once the Act is repealed. An example of this dual process is found in the Gauteng Removal of Restrictions Act.

Specific Sections and Clauses in the Bill

Definitions

The following terms need to be included or refined in the definitions section, as they have a bearing in terms of how the Bill is interpreted. The term Municipal Planning has also not been included. This definition is clearly spelt out in the Constitutional Court Judgment.

- Space
- Regional planning
- Provincial planning
- Engineering services – to include structural engineering
- Concurrency
- Land tenure
- Spatial Development Framework
- Spatial Development
- Land development
- Local area planning
- National interests (and the triggers)
- Provincial national interests (and the triggers)
- Land use scheme
- Affordability in relation to Inclusionary housing
- Development charges Development corridors
- Activity spines
- Economic nodes

Categories of spatial planning: (Chapter 1; Section 4)

The elements listed as constituting municipal planning should be informed by the meaning of municipal planning that was outlined by the constitutional court in the City of Johannesburg Metropolitan Municipality vs the Gauteng Development Tribunal (DFA ruling). The meaning proposed in the Bill on the limitation of municipal planning by introducing the concept of provincial and national interests,

which are terms that are not defined, appears to go against the meaning assigned by the court in the DFA ruling in so far as what constitutes municipal planning.

Whilst the provincial sphere of government also undertakes planning that has a spatial dimension, the level of planning that is done at municipal level should clearly be distinguished from that which is done at provincial level. The current distinction proposed in the draft Bill is not clear enough and can potentially be a source of confusion as to which sphere of government undertakes what form of planning as well as the relationship between the different types of planning.

Development Principles, Compulsory Norms and Standards: (Chapter 2; Section 6)

Whilst the principles outlined in that section represent a "progressive" way of regulating land development in general, it will help if different principles are made to apply at different levels of planning. For example, there are principles that will be more relevant to spatial planning at different levels and those that will be relevant to land use schemes at different levels. When undertaking detailed planning such as rezoning or land use departures, it may be not be possible to give expression to some of the principles as outlined in that section, hence the need to differentiate them according to the applicable level of planning. Whilst the Bill proposes a policy led/informed decision-making criteria for land development, there is need to narrow down the criteria for decision making in order to avoid the evasion of the intent of the law.

Clause 6(a) vi can potentially lead to claims for compensation especially where the decision of the planning tribunal leads to claims of devaluation of property values. The matter pertaining to how the Bill proposes to deal with the question of the impact of planning decisions and processes on property values needs special attention, given the constitutional imperatives and all clauses in the Bill that deal with the question of property values need to be revised accordingly.

Intergovernmental Support (Chapter 3; section 10 (c))

Whilst the notion of intergovernmental support is an important aspect given the capacity constraints experienced by some municipalities, the reference to the Premier taking necessary steps to resolve differences and disputes between the municipality and its local community may inadvertently give the Premier authority to adjudicate in municipal planning disputes. The involvement of the Premier in dispute resolution is unnecessary and possibly unconstitutional as the draft Bill, in other sections proposes measures on how disputes on planning matters will be dealt with, and also makes provision for appeals in certain circumstances. What is required is some clarity on how municipalities under administration and municipalities which are mainly in traditional authority areas, are to be supported or how land use applications will be assessed and spatial planning will be undertaken in these municipalities. The definition of the roles and functions of the various spheres must make it explicit that Province cannot interfere in municipal planning.

Spatial Development Frameworks (Chapter 4)

Section 11 outlines the requirements of Spatial Development Frameworks that *must* be prepared by local government. Whilst the requirements for the local government spatial development frameworks are indeed quite comprehensive, there is however need to differentiate their application to different categories of municipalities. A one size fits all approach may indeed create an unnecessary burden for under-capacitated municipalities as well as those municipalities that are not subject to any meaningful development pressures.

Development Charges (Chapter 7)

The differentiated approach should be followed in determining the services for which development charges should be levied as well as the method for calculating such charges. Local circumstances will inform both.

The Bill specifically addresses the use of development charges and enables a process of exemptions (section 53), all of which may have important fiscal and financial consequences. While this is welcome, there needs to be specific reference in the Bill that National Treasury needs to consult organized local government with respect to understanding the need for category specific development charges policies. The definition and determination of development

charges/contributions must be incorporated in the Bill having regard to the implications of the term used in so far as the provisions of the MFMA which may have some implications. There are some gaps that need to be filled with respect to development charges especially since there is no consistent application and definition of the concept.

The Bill must make it clear that development charges/contributions shall be payable by the developer and not make provision for determination of contributions by agreement, as more often than not, municipalities and developers do not reach agreement. Some of conflict resolution is required in the event of disagreement regarding development charges. Whether such charges are a new form of taxation or a municipal charge for a service being delivered should also be clarified at the same time

Specific points which require clarity

- The preamble deals with a number of issues which are too specific, housing, for example.This make the preamble long and rambling which could be improved by summarizing some of the points into Section 5.

- 1 Definitions. First, the definition of internal and external services does not provide for link services and leaves no municipal discretion on how to deal with link services. Secondly, the concept of inclusive private townships is not provided for in the definition. Third, for the purposes of land use management, the definition of a municipality should exclude district municipalities to avoid duplication.

- 4 (2) (b) What executive powers do provinces have in relation to the development of land?

- 6 (a) Communal land or tribal land is not addressed and must be.

- 6 (d) What is spatial resilience and how does it get expression in spatial planning and land use management?

- 8 (c) The key sectors should be defined.

- 9 (1) (a) What does "within available resources mean"? Does this imply that the Minister can use the limitation of resources as a reason not to offer support role? It is suggested that “within available resources” be substituted with “upon request by Province or Municipality”.

- 9 (1) (b) How will the Minister perform this function? What criteria will be used to determine the quality and effectiveness of an SDF.

- 9 (3) Organized local government which is a constitutional entity, must be part of this.

- 10 (3) Who mediates disputes between municipalities and provinces?

- 11 (4) and (5) It is a generally applied principle in constitutional democracies and a requirement of the Constitutional Court that other spheres of government MUST respect municipal planning, hence also municipal SDFs.

- 11 (6) This section must take into cognizance that development is primarily market driven as the majority of development is done by private developers.

- 12 (5) After having consulted organized local government.

- 13 and 14 imply that local government is to be consulted. This needs to be explicitly stated.

- 17 (1) Is not congruent with the definition of region provided in the Bill. It must make reference to Premiers, as a region can cover more than one province.

- 20 (d) Development corridors, activity spines and economic nodes need to be defined.

- 21 (2) (a) Such a departure should not be conceived by the Tribunal, but should considered by the Tribunal on the basis of an application made. The Tribunal cannot be a planning authority. It should be a decision-maker tasked by a municipality to act on its behalf.

- 21 (3) It is proposed in this section that municipal SDF cannot contradict a provincial or national SDF and if it does it is presumably invalid. However, since the Constitutional Court has confirmed municipal planning to be an exclusive local government function, it has original powers in this regard. National and provincial SDFs should take cognizance of municipal SDFs as a municipal SDF is prepared in compliance with the development principles to be set out herein.

- 21 (4) Without infringing on the right to protect local municipal goals and objectives.

- 24 (1) (d) Currently land owners have justiciable rights arising out of zonings as well as from title deed restrictions which their properties have. Is it being proposed that these be taken away? What forms of compensation are envisaged? What will the zoning revert to?

- 24 (4) This is dangerous and encourages action based on political expediency. This particularly concerning in the context of "public interest" and "disadvantaged community" not being defined.

- 28 (3) The word "may" is inappropriate. Municipalities have the right to be consulted and municipal SDFs and LUMS should be considered to be the primary information documents for such consultation.

- 29 (1) (a) Could this not be the basis for conflict or give rise to conflicting decisions? Perhaps there needs to be a more explicit dispute or conflict resolution mechanism.

- 34 (1) Is this meant to be a sub-committee of the Tribunal? Is the Tribunal delegating decision-making powers to this sub-committee? This creates additional bureaucracy and takes decision-making power even further away from elected representative which they still have to pay for. A sub-committee in this instance should be able to advise the Tribunal at best.

- Other concerns about the Tribunals are raised earlier on in this document.

- 34 (9) A single appeal process should be provided for. The relationship between section 34(9) of the Bill and section 62 of the Systems Act should be clearly spelt out, to avoid duplication. The principle of judicial review by the High Court is legally incorrect .

- 35 (2) Terms and conditions of **appointment**. Tribunal members are appointed, not employed.

- 36 (1) This is a very dangerous way of wording the right to object because it means that anybody can use this to object to anything. As a matter of law, only parties to the initial proceedings should be afforded the right to appeal.

  Should the current composition of the Tribunal (to which we do not agree) be adopted, the municipality should also be afforded the right to appeal since the final decision is taken out of the hands of municipal decision makers.
  36 (2) (h) A development tribunal is a quasi-judicial institution and due to its nature does not have the authority to subpoena any person or institution. It should only consider facts placed before it by applicants, objectors and interested parties.

- 40 (2) Should this not be limited to a decision with respect to an appeal of a Municipal Tribunal decision?

- 41 (1) (h) By whom?

- 42 See comments in terms of legal nature of Tribunal.

- 43 (3) Should this not be the municipality that approaches the other spheres? A third party can't be expected to determine national interest. It should be a state structure that does this.

- 43 (5) (b) This appears to be taking powers away from the municipality. Besides, "national interest" requires further definition if political interference into an autonomous sphere is to be avoided.

- 46 (6) Where external engineering services are installed by an applicant, it must be done to the satisfaction of the municipality and the Bill should require such applicant to provide the municipality with a maintenance guarantee for a period of three years.

- 47 (1) "or service provider" is to be deleted because such a provider provides the service on behalf of the municipality which is the authority.

- 47 (2) It is not clear what this means.

- 48 Provision should be made for a municipal policy on Development Charges as an incentive to meeting municipal goals.

- 49 What is the role of the municipality in policy development?

- 50 ... as advised by the municipality (or Competent Authority?)

- 55 The right to property as contained in the Bill of Rights affords property owners certain rights and section 55 goes against those principles. It is therefore against the rule of law and unconstitutional.

- 56 The Bill should provide specific authority to municipalities to enforce conditions of title and permitted land use and therefore section 56 should empower the municipality to not only impose penalties but criminal sanctions to the effect that illegal use should be discontinued with immediate effect.

- Schedule 1: The uniform set of land use zones is not supported and a differentiated approach should be followed to allow a municipality to align its use zones to its local circumstances.

- The uniform form and content for conditions of approval are not supported as each application should be dealt with on its own merit taking into account the facts of each case.

- Schedule 2: The list of schedule purposes as well as its definitions should be redrafted. The definitions are vague and due to overlap in conditions, are not clear. In any event, the determination of land users should be left to the municipality to determine.

Conclusion

This Bill, although an improvement on previous attempts to develop a national framework for land use management requires further iteration. As SALGA we have not had the opportunity to consult our members, most of whom spend up to 80% of their work (both in terms of powers & functions and in terms of budget allocation) dealing with land use management related matters. As a result, there are many conceptual and procedural issues which are unclear in the Bill and which we need to engage with our members and the Department of Rural Development and Land Reform on.

Through our interaction and representation of our membership, SALGA will continue to engage the legislative process to ensure that the developmental objectives and institutional integrity of local government are enhanced and

protected on the one hand, and that the objectives of the Constitution with regard to spatial planning and land use management are achieved on the other.

The Department is encouraged, with due reference to the comments submitted herewith, to address these fundamental concerns to ensure that the Bill in fact realises its constitutional object within the confines of the Constitution and system of decentralisation.