

Spatial Land-Use Planning and Management Bill

The Minister of Rural Development and Land Reform has introduced the Spatial Planning and Land-Use Management Bill (SPLUMB) (14 of 2012) in Parliament. The Bill, which is likely to be fast-tracked, will have very serious consequences for local government. It aims to confirm, but also regulate the role of municipalities in land-use planning and land-use management. This article provides a very brief overview of the Bill's main features.

framework or zoning scheme or when it decides on an application. They deal with issues such as spatial inequality, the inclusion into the planning system of marginalised communities (informal settlements, former homeland areas etc.). The Bill also instructs the municipality to give special consideration to prime agricultural land, to limiting urban sprawl, to upholding consistency with environmental management instruments, and to promoting efficiency and resilience to economic and environmental shocks. Good administration is also included as a principle. This includes references to transparency and public participation but also an instruction to national and provincial government departments to ensure that they don't delay procedures by withholding sector input. An important principle is the one that provides that the discretion of a municipality is not limited by the fact that property values may be affected by its decision.

Spatial planning system

The Bill provides that spatial planning consists of:

- (1) spatial development frameworks adopted at each level of government;
- (2) development principles, norms and standards;
- (3) the management and facilitation of land use through land-use schemes; and
- (4) procedures to deal with and decide on development applications provided for in national and provincial legislation.

This provision thus does not consider the municipal by-law on municipal planning as part of the spatial planning system.

Development principles

The Bill contains a list of development principles. These apply to a municipality when it compiles its spatial development

Spatial development frameworks

The Bill instructs national, provincial and local governments to adopt spatial development frameworks (SDFs). It presents these SDFs as documents that interpret and represent the spatial development vision of the relevant government. They must 'guide planning and development decisions across all sectors'.

The Bill provides an impressive list of values that must underpin these SDFs. SDFs must, for example, provide direction to public and private investors, include historically disadvantaged areas, informal settlements and traditional authorities, identify long-term risks of growth and be the product of substantial public engagement.

National Spatial Development Framework

The National Spatial Development Framework (NSDF) must indicate the desired patterns of land use in South Africa. It will be determined by the Minister and must be reviewed once every five years. The Bill provides a basic public consultation procedure.

See also Ntliziywana, P (2011) 'Regional spatial development framework vs municipal zoning scheme: Which trumps the other?', *LGB 14(1): 19*, available for downloading from our website at <http://www.ldphs.org.za/local-government-bulletin>

plan. However, it must also indicate desired growth and development patterns for 10 and 20 years into the future. The Bill continues with a list of requirements for the MSDF, including:

- population growth estimates;
- housing demand estimates;
- economic activity and employment trends;
- infrastructure and service requirements for current and future

Provincial Spatial Development Framework

The Provincial Spatial Development Framework (PSDF) must provide a spatial representation of the province's land development policies, strategies and objectives. It must include the provincial growth and development strategy where applicable. It must indicate desired and intended patterns of land use and, importantly, delineate areas in which development would not be appropriate. It is adopted by the provincial executive council and must also be reviewed every five years. The Bill prescribes consultation with the public.

Regional Spatial Development Framework

The Bill defines a region as an area characterised by distinctive economic, social or natural features, irrespective of any municipal or provincial boundary. A region may thus straddle municipal or provincial boundaries but it may also be wholly within a province or within a municipality. The Bill envisages two reasons for the Minister to adopt a Regional Spatial Development Framework (RSDF) for a region. First, when a municipality fails to adopt or amend an MSDF (see below) the Minister may step in, declare a region and adopt an RSDF for that region. Secondly, when it is 'necessary to give effect to national land-use policies or priorities' the Minister may do the same. In that case, the RSDF would exist alongside the existing MSDF. The Minister is instructed to consult before determining a RSDF.

The national 'imposition' of an RSDF in an area where the municipality failed to adopt an MSDF may not go down well with local government. It could be labelled as an intervention, disguised as a regional plan. In addition, the prospect of certain areas governed by an NSDF, PSDF, MSDF and RSDF is not attractive.

Municipal SDF

The municipal SDF of SPLUMB is the same as the SDF that a municipality adopts as part of its IDP. The Bill provides that the MSDF must be a five-year spatial development

development;

- identification of areas for inclusionary housing; and
- strategic assessment of environmental pressures and opportunities.

SPLUMB significantly enhances the status of the MSDF. The municipality may not take a decision that is inconsistent with a MSDF. Departure from an MSDF is permitted only if 'site-specific circumstances' justify it or when the application of the MSDF will lead to 'illogical or unintended' results. This is a departure from the current situation where the SDF does not appear to have binding effect (see *LGB 14(1)* page 19).

The key issue with regard to these provisions is how municipalities are expected to combine them with the Municipal Systems Act and its regulations on the content of the IDP.

Land-use schemes

SPLUMB instructs each municipality to adopt a single land-use/zoning scheme for its entire jurisdiction within five years of the Act coming into operation. After that, the scheme must be reviewed every five years. It must thus include areas that were not subject to a scheme before. The land-use scheme includes:

1. scheme regulations, setting out procedures and conditions relating to the use and development of land in any zone;
2. a map indicating 'land-use zones'; and
3. a register of all amendments to a land-use scheme.

The scheme must include categories of zoning and regulations and must comply with environmental prescripts. Furthermore, it must include inclusionary housing, and permit incremental introduction of land-use management in areas under traditional leadership, in informal settlements and in areas previously not subject to a land-use scheme. The scheme may include provisions relating to consent uses and special zones to address specific priorities.

The scheme has force of law and provides for actual land-use rights. Land may be used only for the purpose permitted by such schemes. This permitted land use may be changed by the municipality. The Bill also provides that a municipality 'may amend its land-use scheme by rezoning'.

The Bill does not use clear terminology with regard to the changing of land-use rights. For example, the difference between 'changing permitted land use' and 'amendment by rezoning' is not clear. Furthermore, SPLUMB's treatment of the land-use scheme suggests that the scheme includes regulations. Municipalities will have to adopt those regulations according to the procedures pertaining to by-laws.

Authorisations across sectors

The Bill includes an important provision with regard to the alignment of authorisations across sectors. Where there is other law regulating the same activity, the municipality and the relevant organ of state may exercise their powers jointly. For example, if the municipality and the Department of Agriculture make use of this provision, the municipal land-use approval and the national approval of agricultural subdivision could be issued in one integrated authorisation.

Municipal planning tribunals

SPLUMB provides that all development applications must be submitted to the municipality. Each municipality must establish a municipal planning tribunal of at least five members. This tribunal must consist of officials and persons who are not officials. They must have knowledge and experience of spatial planning, land-use management or the law related to it. Councillors may not be appointed as members. The terms and conditions are determined by the council in line with standards determined by the Minister. Two or more municipalities may agree to establish a joint tribunal. The Bill also permits a district municipality to establish a district-wide tribunal with the agreement of all



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local municipalities. If a municipal council fails to appoint the members of its tribunal, the Premier may appoint such persons on behalf of the council.

The tribunal considers and decides on applications, including the imposition of conditions related to the provision of engineering services and the payment of development charges. It may conduct investigations, direct municipal staff and appoint technical advisors. The tribunal may deal with township establishment, subdivision, consolidation, amendment of land-use schemes or the changing of restrictive conditions.

The Bill's insistence on a tribunal is clearly an attempt to immunise decision making from political interference. Should this Bill go ahead, land-use decision making will become the third area that is 'off limits' for councillors, after procurement and ordinary staff appointments. The practical implications of these tribunals are critical. First, it creates an additional municipal structure that must be funded by the municipality. Secondly, it must be populated with skilled members and not every municipality may have access to sufficient outside members with the requisite expertise.

Appeals

The Bill envisages that aggrieved parties (such as the unsuccessful applicant and affected parties) may appeal against a decision of the tribunal. Appeals will be decided by the municipality's executive committee or executive mayor. In municipalities of the 'plenary type' (i.e. no executive committee or executive mayor), the appeal will be decided by

the council. Therefore, the Bill does not completely remove land-use decision making from the political realm as the appeal authority is decidedly political. The appeal authority decides the appeal but its decision cannot change any rights that have accrued as a result of the original decision. In suggesting this scheme, the Bill aligns with section 62 of the Systems Act and opens it up for third parties.

Applications affecting a national interest

The Bill defines a set of circumstances under which a land development application must be referred to the national Minister. Those circumstances revolve around exclusive national functions, strategic national policy objectives, principles or priorities and a number of other criteria. Where an applicant believes that the application is likely to affect the national interest a copy of the application must go to the Minister. In any event, the municipal planning tribunal must inform the Minister if an application affects the national interest. The Minister will then either join as a party in the application or direct that the application must be referred to him or her to decide.

This provision is likely to face stiff opposition. While the national government may legitimately seek direct involvement in land-use decisions that affect a national interest, it is now not clear how that national interest is triggered. This is problematic as prospective applicants (who may include investors, who risk capital) will not be able to predict what route their application is going to follow.

In addition to not being clear, the national triggers are overly broad and arguably unconstitutional. For example, the Bill provides that an application that 'impacts on land use for a purpose which falls within the functional area of the national sphere of government' should be referred to the Minister. The functional areas of the national sphere of government include housing. This would mean that the Minister of Rural Development and Land Reform should be involved in all land-use applications involving housing development, which cannot be the intention of this provision.

National and provincial supervision

National monitoring

Section 9 of the Bill instructs the Minister of Rural Development and Land Reform to monitor and support the implementation of the Act by provinces

and municipalities. In particular, the Minister must monitor progress made by municipalities in adopting or amending land use schemes, the quality of SDFs (see below) and the capacity of provinces and municipalities.

Provincial law

The Bill expects provincial legislation to address the detail of the land-use management framework. Schedule 2 of the Bill contains a very extensive list of issues to be addressed in provincial legislation, such as:

- determining uniform land-use zones;
- establishing procedures for conducting public participation on rezoning;
- determining procedures for dealing with applications;
- regulating the provision of engineering services; and
- providing for appeal and review procedures.

While the Bill should afford space for provincial law, it is suggested that the Bill overstates the authority of provinces. The provincial authority with regard to many of these issues does not extend to the level of detail suggested in the Bill.

Provincial supervision and intervention

Provinces are instructed by the Bill to develop mechanisms to support, monitor and strengthen municipal capacity to implement the Act. The Bill envisages that provincial premiers will assist municipalities with their land-use schemes, facilitate coordination and resolve disputes. Provincial legislation may provide for 'remedial measures' in the event of the inability or failure of a municipality to comply with the Act or a provincial planning law. This provision is reminiscent of section 139 of the Constitution and, it is suggested, may only apply in line with that constitutional provision.

The difficulty with these provisions is that they establish multiple layers of monitoring and support without offering mechanisms for the delineation of tasks between national and provincial governments.

Conclusion

By all accounts, the Bill is a significant improvement on the version that was published in May 2011. However, it remains critical for municipalities to engage with Parliament on the content and suggest alternatives to some of the sections that are likely to impede their operations.



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