SPATIAL PLANNING AND LAND USE MANAGEMENT BILL

Urban LandMark Conference

"Investing in Land and Strengthening Property Rights"

12 April 2012
In addition to other substantive provisions in section 25 of the Constitution mandating land reform, improving and ensuring secure tenure rights, redressing other imbalances brought about by past land dispossession and guaranteeing property rights, section 25 (5) proclaims that:

“The state must take reasonable legislative and other measures, within its available resources, to foster conditions which enable citizens to gain access to land on an equitable basis.”
BACKGROUND

Post-1994 Realities

Causes
† Physical Planning Acts 1967 and 1991
† Provincial Ordinances
† SGT/Bantustan laws
† Planning Related laws at both National and Provincial spheres

Consequences
† segregation, differentiation, unevenness
† multiple institutions
† parallel processes
† uncoordinated sectoral policies

WPSPLUM 2001

Study of planning laws "revealed an extraordinarily complex and inefficient legal framework, with planning officials in all spheres of government having to deal with numerous different systems within the jurisdiction of each province, and indeed within most municipalities. The difficulty of dealing with this legal inheritance compounds the already difficult task of planning for sustainable, integrated and equitable land use and development in South Africa"
BACKGROUND

Early National Policy & Legislative Efforts

- Local Government Transition Act 209 of 1993
- Development Facilitation Act 67 of 1995
- Green Paper on Development and Planning (GN 626 of 1999)
- White Paper on Spatial Planning & Land Use Management (July 2001)
- Draft Land Use Management Bill (July 2001)

Early Provincial Policy & Legislative Efforts (especially KZN, WC, NC & Gauteng)
SHARED VISION?

† Until the DFA Judgment in June 2010 there has been relative lack of clarity in the Constitution about the meaning of planning and which spheres of government responsible for land use planning and management;

† Lack of precision and shared understanding of the terminology that is used in the debates about planning;

† Lack of clarity between key national departments over who is responsible for land use planning and spatial planning;

† Subtle turf wars between national government and the provinces over who has responsibility for rationalizing and modernizing planning systems

† Four provinces have developed new planning and land use legislation of their own (largely outside of a national framework);

† Lack of sustained leadership regarding the rationalization and modernizing of planning and land use management
NEED FOR SPLUMB: POST-DFA

† The DFA was intended to be an interim measure, and is to be repealed by SPLUMB (in its current and earlier versions).

† In June 2010, the Constitutional Court found Chapters V and VI of the DFA to be invalid on grounds of unconstitutionality.

† Nugent JA in the COJMM (DFA) case

"The existence of parallel authority in the hands of two different bodies, with its potential for the two bodies to speak with different voices on the same subject matter, cannot but be disruptive to orderly planning and development within a municipal area."

† The ConCourt found that municipal planning includes the powers and functions necessary to determine rezoning and township establishment applications, and concluded that municipal planning is the competence of municipal government.

† The order of invalidity was suspended for 2 years, i.e. until June 2012, to allow the defects in the DFA to be remedied.
**SPLUMB – OBJECTIVES**

**Desired Outcomes**

† Coherent regulatory framework on land use management, land development and planning system;
† Constitutional synergy (clear delineation, distribution & allocation of powers among spheres);
† Predictable and transparent regulatory system (key to protection of rights); and
† System for clear, rational and efficient inter-linkages of sectoral and inter-sphere spatial planning tools and policies

**A ‘Framework’ legislation**

† co-existing and parallel national and provincial laws;
† Repeal of Old Order National, Provincial, & Assigned laws ;
† National and provincial laws - Alignment of substance and processes;
† Law reform incomplete in the absence of Provincial laws; and
† Role of Institutions - shaping our interactions
LUMS GOVERNANCE SYSTEMS

- Impact of history
- Municipal Systems Act
- Cross-cutting mandates
- Pro-poor
- Protection of economic (property) rights
- Infusion of planning & related sectors into LUMS (multi-criteria analysis),
- SDF-LUMF/P/S-LUScheme-Management Overlays & other extra-/non- statutory tools in aid of planning
- Participatory planning/voices/power relations
- Between protection of rights and promotion of new land use rights
- Limits of “legislation”
TENURE AND LUM

† the existence of a range of tenure types, many of which are inferior and prejudice the holders;
† the absence of laws and mechanisms to upgrade tenure types, particularly the absence of uniform laws;
† legal protection for the multi-form tenure types (continuum of informal to formal);
† the low levels of local knowledge of the rights people hold in land and the lack of documentary proof of their rights;
† the disjuncture between national policy and implementation by the provincial and municipal spheres;
† the fragmented administrative systems, due to different laws applying in different parts of the country;
† the uncertain legal status of these laws in ex-TVBC/SGT States;
† the legal procedures for obtaining administrative control over urban land (technical and administrative systems);
† progressive realisation of rights of access to adequate housing, equitable access to land, and legally secure tenure.
REALITIES IN THE RURAL SPACE

- state land
- unresolved tenure issues
- communal ownership and titling vs Freehold
- Traditional Leadership and 'weak' linkages with formal municipal governance (section 81 of the Municipal Structures Act)
- Community participation and alternative 'democratic' expression
- Spatial datasets, cadastre, and land use schemes
- Enforcement
TRANSFORMING THE RURAL SPACE

- Responsiveness of our LUMS in dealing with Land under Traditional Leadership
- Fragile and threatened Eco-systems of our rural space
- Value-capture in rural space
- Declining economic activities in rural areas
- Weak Municipalities & capacity challenges
- LUM and interconnection with land allocation
- A model for LUMS in areas under traditional leadership, and heterogeneous systems (tenure, conflict-resolution, boundaries, etc)
TRANSFORMING THE URBAN SPACE

- economic factors/engines of growth
- best practices for weaker municipalities
- exclusion and inclusion
- formality and informality
- Growth Management Strategies
- irregular land use and evictions strategy
- planning Laws & Embedded Power Relations (criminalisation of poverty)
CRAFTING POLICY TOOLS & INSTRUMENTS

† Navigating the "Constitution’s" Matrix: Allocation of Powers & Functions
† Institutional Challenges of multi-sphere arrangement
† Vertical & horizontal integration and alignment of powers & functions
† Distinctive, Interdependent and Interrelated (section 40 of the Constitution)
† Respect for institutional integrity
† Judicial pointers
  † Fuel Retailers case
  † Stalwo v Wary Holdings
  † COJMM (DFA) Case
  † Lagoon Bay
  † Swartland Municipality
SPLUMB - TOOLS & INSTRUMENTS

† Development Principles
† Norms and Standards
† National and Provincial Monitoring & Support
† Spatial Development Frameworks (SDFs) across National, Provincial, Regional & Municipal scales
† Land Use Schemes
† Municipal Planning Tribunals
† Minister, acting in National Interest
† Supportive Provincial laws
**THE BILL**

**CHAPTER 1:** provides for definitions, the Application of the Act, an outline of the System of Planning in South Africa, and the categories of spatial planning.

**CHAPTER 2:** provides an outline of key principles that are applicable to the Spatial Planning System and will also guide land development in general. The chapter also provides for the Minister to set out norms and standards for spatial planning and land use management.

**CHAPTER 3:** outlines the mandates of National and Provincial spheres in monitoring and support provision to ensure effective spatial planning and land use management processes. Provides for differentiated approach to municipalities.

**CHAPTER 4:** provides for the preparation and contents of National, Provincial, Regional and Municipal Spatial Development Frameworks, as well as the status of Spatial Development Frameworks.
**THE BILL**

**CHAPTER 5:** provides for the adoption of municipal land use schemes, including their purpose, content, status, review, and relationship with existing land use schemes. The section also provides for the amendment of land use schemes and the alignment of authorizations in terms of other applicable legislation.

**CHAPTER 6:** provides for the establishment, composition, powers and functions of Municipal Planning Tribunals, as well as for internal appeals against the decisions of Municipal Planning Tribunals. Deals with possible municipal cooperation in adopting land use schemes and joint consideration of land development applications. Also deals with guidelines for dealing with development applications that affect the national interest.

**CHAPTER 7:** contains general provisions on commencement of registration of ownership, regulations, powers of the Minister to grant exemptions from provisions of the Act, delegations by the Minister, Premier and municipalities to officials, non-impediment of function, offences and penalties, Repeal of legislation, Transitional provisions, and Short title.
STATUS OF THE BILL

† The draft Bill was approved by Cabinet for publication and public consultation in April 2011. The draft Bill was gazetted on 6 May 2011, with the consultation period closing on 6 June 2011.

† In response to this call a total of 110 comments were received from all sectors.

† A Regulatory Impact Assessment of the Bill was also concluded in June 2011.

† The public consultation process and ongoing engagements have yielded many suggestions on amendments to the Bill (including deletions, additions, clarifications and redrafting).

† Cabinet approved the Bill on the 20 March 2012 for introduction to Parliament. Cabinet further approved that the Leader of Government Business will liaise with Parliament to explore expedited processing of this Bill through Parliament.

† The draft Bill, as amended, is currently being discussed with the State Law Advisers & the leadership of the Parliament, before formal processing by Parliament.
ISSUES & CHALLENGES

- Municipal Planning [in the wider context of the planning roles and responsibilities of each sphere of government]
- National Interest/Planning and Provincial Interest/Planning
- Support and monitoring of municipalities
- Appeals
 IMPLEMENTATION FRAMEWORK

Objectives

‡ ensuring that the National framework legislation and Provincial Bills provide suitable frameworks to deliver policy outcomes into the future;
‡ enabling the planning system to better respond to the challenges of the future;
‡ reducing the regulatory burden;
‡ increasing efficiency, effectiveness, certainty and transparency;
‡ improving the speed and quality of decision-making; and
‡ delivering mechanisms that help to balance policy objectives in decision-making.
## WAY FORWARD

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<thead>
<tr>
<th>TASKS</th>
<th>DATES</th>
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<tbody>
<tr>
<td>1. Redraft of Bill</td>
<td>Jan/March 2012</td>
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<tr>
<td>2. State Law Advisor Opinion (incl Redraft of Bill)</td>
<td>Jan/March 2012</td>
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<td>3. Presentation to DG Cluster</td>
<td>08 Feb 2012</td>
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<td>4. Additional/limited Consultation with National Departments</td>
<td>Feb 2012</td>
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<td>5. Full Ministers Cluster</td>
<td>29 Feb 2012</td>
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<tr>
<td>6. Cabinet Committee (approval of Bill and possible recommendation/decision of application to ConCourt for limited extension of June 2012 deadline)</td>
<td>14 March 2012</td>
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<td>7. Cabinet (Confirmation of CabCom’s recommendation)</td>
<td>20 March 2012</td>
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<td>8. Publication of Bill / Formal Introduction into Parliament</td>
<td>March/April 2012</td>
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<td>9. Translation of Bill into 2nd Language</td>
<td>April 2012</td>
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<td>10. Parliaments JTM (Joint Tagging Mechanism – Sec 76 Bill) (2-3 weeks after Cabinet Approval)</td>
<td>April 2012</td>
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<td>(a) Special/Ad hoc Committee on SPLUMB (incl Committees on Cooperative Governance, Human Settlement, Rural Development &amp; Land Reform etc)</td>
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<td>(b) Accelerated Process on the Consideration of the Bill (negotiating dates for public hearings, Committee, etc)</td>
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<td>13. Draft Regulations to the Bill</td>
<td>April 2012</td>
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<td>16. Presidential Assent (subject to progress on 6 – 14)</td>
<td>June 2012</td>
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<td>17. Commencement (subject to progress on 6 – 14)</td>
<td>June 2012</td>
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Thank You

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