

REPORT OF THE PORTFOLIO COMMITTEE ON AGRICULTURE, RURAL DEVELOPMENT AND LAND ADMINISTRATION; ECONOMIC DEVELOPMENT, ENVIRONMENT AND TOURISM ON THE SPATIAL PLANNING AND LAND USE MANAGEMENT BILL [B14B-2012]

1. INTRODUCTION

The Speaker of the Mpumalanga Provincial Legislature referred the **Spatial Planning and Land Use Management Bill [B14B – 2012] (the Bill)** to the Portfolio Committee on Agriculture, Rural Development and Land Administration; Economic Development, Environment and Tourism (the Committee) in accordance with Rule 185 of the Rules and Orders of the Mpumalanga Provincial Legislature.

The Committee was tasked to consider the Bill and report back to the House with a mandate to empower the Permanent Delegate in the National Council of Provinces (NCOP) to negotiate on behalf of the Province of Mpumalanga in processing this piece of legislation.

2. BACKGROUND

The Bill was approved by Cabinet for publication and public consultation in April 2011. The draft Bill was gazetted on 06 May 2011, with the formal consultation period closing on 06 June 2011. While the Bill was initially introduced in the National Council of Provinces (NCOP) in May 2012 it was withdrawn and re-introduced in the National Assembly on 25 June 2012.

The Bill was then referred to the National Council of Provinces (NCOP) Select Committee on Land and Environmental Affairs in terms of Clause 76 (1) of the Constitution of the Republic of South Africa (the Constitution) which requires participation of the provinces in a Bill that is before Parliament. On 23 April 2013, the Department of Rural Development and Land Reform (DRDLR) briefed the Select Committee on the Bill. Subsequently, the NCOP Chairperson referred the Bill to the provincial legislatures for further consultation with the public and stakeholders.

3. OBJECTIVES OF THE BILL

The **Spatial Planning and Land Use Management Bill** seeks to

- provide a framework for spatial planning and land use management in the Republic;
- specify the relationship between the spatial planning and the land use Management system and other kinds of planning;
- provide for the inclusive, developmental, equitable and efficient spatial planning at the different spheres of government;
- provide a framework for the monitoring, coordination and review of the spatial planning and land use management system;
- provide a framework for policies, principles, norms and standards for spatial development planning and land use management;
- address past spatial and regulatory imbalances;
- promote greater consistency and uniformity in the application procedures and decision-making by authorities responsible for land use decisions and development applications;
- provide for the establishment, functions and operations of Municipal Planning Tribunals;
- provide for the facilitation and enforcement of land use and development measures;
- provide for matters connected therewith.

4. METHOD OF WORK

The Speaker referred the Bill to the Committee on 23 April 2013 for consideration. Thereafter the Committee interacted with the Bill as follows:

- a. The Committee was briefed on the Bill on 02 May 2013 by the Permanent Delegate representing Mpumalanga in the NCOP, assisted by the Chief Director Spatial Planning Services of the Department of Rural Development and Land Reform (DRDLR).

b. The Committee invited a range of stakeholders to be part of the briefing and to submit written comments on the SPLUM Bill; these included the following government departments and parastatals:

- Agriculture, Rural Development and Land Administration (DARDLA);
- Cooperative Governance and Traditional Affairs (COGTA);
- Human Settlements (DHS);
- Economic Development, Environment and Tourism (DEDET);
- Mpumalanga Tourism and Parks Agency (MTPA);
- Mpumalanga Economic Growth Agency (MEGA);
- Mpumalanga Gambling Board (MGB); and
- Public Works, Roads and Transport;

c. **The following invited stakeholders also attended the briefing:**

- Provincial House of Traditional Leaders (HTL)
- South African Local Government Association (SALGA)

d. At the briefing, the Committee resolved in terms of Clause 118 (1) of the Constitution, the Committee to hold public hearings in all three districts of the Province in order to interact with the public, communities and relevant stakeholders.

e. After the public hearings, the Committee convened on 30 May 2013 to consider its draft report and its negotiating mandate on the Bill.

5. BRIEFING BY THE NCOP

5.1. Overview by the Permanent Delegate to the NCOP

The Permanent Delegate representing Mpumalanga in the NCOP, Hon MP Sibande, commended the Committee for the range of key stakeholders who had been invited to the briefing as it displayed the Committee's grasp of the underlying principles of the Bill as relating to the Province of Mpumalanga. The main stakeholder being the Mpumalanga House of Traditional Leaders.

In addition, the Honourable Member emphasized that national departments must always ensure that they make contact with the NCOP Permanent delegate *before* the briefing session to the Committee. Hon Sibande then went on to provide an overview on the SPLUM Bill, thereby highlighting to the Committee the following pertinent points that the Bill raised in relation to the Province:

- a) The main objectives of the Bill are to empower the municipal sphere of governance to develop Spatial Development Frameworks (SDFs) and Land Use Management schemes (LUMS). The Bill also seeks to coordinate the three spheres of government and to define norms and standards.
- b) The Bill also held particular significance for traditional authorities. The HTL must thus be recognized as a partner in the development of land within the Province;
- c) Public participation and engagement is important throughout the process of adopting land use management agreements, especially as pertaining to the traditional authorities represented by the House of Traditional Leaders (HTL);
- d) The Committee's attention was drawn to the fact that the Bill was a framework Bill that once passed, would require provinces to come up with their own planning legislation to implement the SPLUM Bill. Provinces will be required to develop their own planning legislation and spatial development frameworks;
- e) The Hon Member indicated to the Committee that currently there is no spatial development framework at national level;
- f) **The Committee was also sensitized that a Municipal Planning Tribunal must be established and that the tribunal should be composed of a mixture of politicians and officials.**

5.2. Presentation by the national Department of Rural Development and Land Reform (DRDLR)

The DRDLR made a presentation to the Committee on the details of the Bill. Mr Sunday Ogunronbi, the Chief Director for Spatial Planning Services proceeded to make an informative presentation on the Bill to the Committee and the invited stakeholders.

The Committee noted the following important points from the presentation:

- Some municipalities have capacity challenges that would affect the implementation of the Bill, but the DRDLR was aware of this;
- There was a general shortage of town planners in the country;
- Within five (5) years of the promulgation of the SPLUM Act, all municipalities should have SDFs and LUMS and their planning should accordingly reflect this;
- Even if the Minister issues a permit for land use, the Executive Authority of a municipality must still be consulted; the Minister may intervene in crucial instances.

5.3. Interaction by the Committee during the briefing

The Committee welcomed the briefing by Hon Sibande and the delegation from the DRDLR and the presentation by Mr Ogunronbi. The Honourable Members of the Committee interacted with the Bill by raising the following concerns, comments and clarity-seeking questions:

- a. The Committee acknowledged the attendance of the Provincial House of Traditional Leaders (HTL) at the briefing as an important stakeholder to be part of the consultation process on the Bill. **The Committee agreed with the point that the Bill held particular significance for traditional leaders. Therefore, the Committee was of the view that the Bill is silent about the specific powers of the traditional authorities in relation to land issues.**
- b. **The Committee was concerned about the potential conflict between traditional councils and municipalities with regard to allocation of land for residential and business purposes.** The Committee emphasized that harmony between the 3 spheres of government and the traditional authorities is of utmost importance, with the role of traditional authorities being adequately acknowledged.
- c. **The Committee strongly indicated that if the Bill did not ensure that traditional authorities would be acknowledged and empowered to understand their role in the development of land in order to educate the communities they represented, then the Bill would not work in the Province of Mpumalanga and the Committee**

would furthermore not support the Bill. The DRDLR assured the Committee that the traditional leaders were extensively consulted, even at national level. It was also pointed out that Clause 23(2) was critical in that it mandated municipalities to include the participation of the traditional leaders.

- d. **On the issue of financial implications of the Bill, the Committee raised a serious concern that up to the point of briefing provinces on the Bill, the department had not cleared up the financial aspects of the implementation of the Bill.**
- e. The Committee was of the view that Mpumalanga in particular, will have capacity challenges and that National Treasury should have planned better. **Failure to consider the financial and capacity implications of the Bill would result in yet again in Bills being passed by provincial legislatures, but not being implemented due to lack of funding and capacity at provincial and/or local government level.**
- f. **On Clause 3(e) of the Bill the Committee raised a concern, saying that this Clause should be specific as to which aspect of inter-governmental relations (IGR) is referred to and that it should also refer to land use specifically.** The DRDLR agreed that Clause 3 (e) is not linked to planning. The DRDLR also sought to clarify this concern of the Committee by indicating that Clauses 9, 10 and 11 clarified planning issues and the specific kind of IGR support to be provided, in terms of the IGRF Act, 2005.
- g. **The Committee indicated that the Bill must strengthen the Municipal Planning Tribunal (MPT) as an institutional arrangement in municipalities, to discharge its functions. It was highlighted that politicians, as representatives of the public, cannot be removed from this important process.** The DRDLR agreed with the Committee in this regard, indicating that according to Clause 23, all political decisions taken in the LUMS must be implemented accordingly by officials and that these decisions must still go back to the municipal council for concurrence and authorization.
- h. **The Committee also indicated that the Bill is vague on the issue of the specific expertise that would be needed by the Municipal Planning Tribunal and the technical support it would need.** The Committee emphasized that if this is not in place, the Bill will not have a strong positive impact.

- i. Noting that the lack of a national Spatial Development Framework (SDF) the Committee urged that the development of the SDF's should be collaborative in nature so that all parties can be aware and involved. It was also noted that all land use applications must be consistent with municipal SDF's.
- j. **The problematic issue of land invasion in the Thembisile-Hani local municipality and Nkomazi local municipality was also deliberated upon.** The Committee agreed that the unscrupulous land-related practices being perpetuated in the former homelands should be stopped. To this effect, the provincial government should be empowered to intervene in difficult land development cases (through court orders). The Committee reflected that at times the work of government departments was made difficult because of tense relations with the municipalities.
- k. **The Committee also observed that in most cases in the province and the country, the planning of land use has been lopsided in that officials had not correctly implemented decisions taken by politicians.** The result being that, for example, taverns are currently next to crèches. The Committee also made an observation that since 1994 there are more slum areas in the province and the country.
- l. It was noted that provincial planning and land development should thus be futuristic in terms of how we want our province and country to reflect non-racialism. The Committee emphasized the need for de-racialisation of towns and that politicians have an important role to play in this process through the MPT. **The Committee thus agreed that the orderly development of the province and the country in terms of land ownership and use is dependent on the SPLUM Bill.**
- m. **The Committee had no immediate objections to the main aims of the Bill, acknowledging that the Bill is progressive for the province in terms of town and regional planning, as well as the usage of land for development purposes.**

6. PUBLIC INVOLVEMENT PROCESS

a) The Committee facilitated public involvement with the Bill by inviting the following stakeholders to the public hearings:

- Mbombela Local Municipality and Ehlanzeni District Municipality;
- Dr JS Local Municipality and Nkangala District Municipality;
- Msukaligwa Local Municipality and Gert Sibande District Municipality;
- All government departments and parastatals who attended the briefing;
- Parliamentary Constituency Offices in the above-mentioned local municipalities;
- Provincial House of Traditional Leaders (HTL)
- South African Local Government Association (SALGA)

b) The Committee also published an open invitation to the public hearings and a call for public comments on the Bill in the print media, which appeared in the following publications that ensured broad coverage of the Province **during the week of 06 – 10 May 2013:**

- Mpumalanga News
- Lowvelder
- Bushbuckridge Times
- Daily Sun

c) The Bill was also available to the public and interested stakeholders via the Mpumalanga Provincial Legislature website www.mpuleg.gov.za

6.1. Written Comments on the Bill

Written comments were received from the following stakeholders and have been incorporated into this Committee report for ease of reference:

- Mpumalanga House of Traditional Leaders (MHTL);
- South African Local Government Association (SALGA);
- Department of Agriculture, Rural Development and Land Administration (DARDLA);
- Eskom;

- CRH Clanahan and Associates- Civil Engineering and Environmental Management;
- South African Property Owners' Association (SAPOA);
- Department of Cooperative Governance and Traditional Affairs (COGTA)

6.1.1. Mpumalanga House of Traditional Leaders (MHTL)

As an institution created and regulated in terms of the Mpumalanga Provincial Houses and Local Houses Act no 6 of 2005, the functional areas of the MHTL includes oversight, monitoring, advice and participation of issues of customary law, culture, customs, issues of traditional leadership and related matters impacting on the institution. The MHTL attended the briefing session on the Bill and also went through the Bill. Subsequently, the MHTL submitted its concerns as a written submission to the Committee, indicating the following inputs:

- a) The Bill leaves out traditional councils when the land in rural areas is being controlled by the Traditional Councils.
- b) The Department of Rural Development and Land Reform (DRDLR) should have taken this opportunity to amalgamate CLaRA (Communal Land Rights Act) with other legislations regulating issues of Land Use and Land Rights.
- c) The establishment of tribunals from local level to the upper echelons does not cater for participation of traditional leaders and neither the traditional councils.
- d) It should be noted that Houses of Traditional Leaders and Traditional Councils are state organs/constitutional structures which should be taken as such by government, especially municipalities.
- e) Issues of spatial planning and land use management in the rural communities are within the jurisdiction of Ubukhosi.
- f) The MHTL doubts whether the has DRDLR taken into consideration the comments noted in the previous Land Use Management Bill which lapsed in Parliament.

6.1.2. Input by the Department of Agriculture, Rural Development and Land Administration (DARDLA)

The Committee notes that the provincial Department of Agriculture, Rural Development and Land Administration (DARDLA) was part of the development of the SPLUM Bill and that it supported the passing of the Bill.

The DARDLA made a written submission to the Committee indicating the following views on the Bill:

- a) The main concern raised to the Committee's attention was the fact that the department currently administers a large number of fragmented and out-dated planning legislations that applied to different areas in the past. Furthermore, the department indicated that this situation makes processes cumbersome and inaccessible to the public at large.
- b) The DARDLA pointed out that the Provincial government and municipalities were part of the consultative process by the national government to develop the SPLUM Bill.
- c) The DARDLA also indicated that the rationale of the SPLUM Bill will be to the benefit of spatial planning and land use management in the Province, in the sense that it will:
 - Allow for one planning law for the whole province, which will simplify processes.
 - All land development within the former homelands and the Transvaal areas will now follow the same rules;
 - Empower municipalities as decision makers, which is in line with the Constitution;
 - Link Spatial Development Frameworks (forward planning) with Land Use Management Schemes (land use management) and will eliminate fragmented decision making;
 - Allow provinces to develop their own legislation, policies and guidelines, as well as norms and standards;
 - Provide for provinces to monitor and support municipalities with spatial planning and land use management. This is of particular importance in areas where capacity is lacking;

- Efficiently deal with illegal land development and use of land, as the new legislation gives powers to local municipalities to deal with illegal use of land.
- d) The DARDLA noted that technical and administrative personnel are needed, to which end the DARDLA, together with the National Department of Rural Development and Land Reform are working on a strategy to support and capacitate weaker municipalities to implement the Bill once passed.
- e) The DARDLA also raised a concern that the internal appeal process might be biased if municipalities have interest in land development; however, the DARDLA noted that SPLUM Bill does provide for independent appeal bodies that advise the Executive Authority of municipalities in appeals.
- f) Finally, the DARDLA states that transitional arrangements must be clarified in the regulations as it will guide land development applications until the provincial legislation is enacted.

6.1.3. South African Local Government Association (SALGA)

The Committee received a submission from SALGA, which had been made at the national level as well. The following brief comment from SALGA is noted:

SALGA welcomed the opportunity to make further representations on the Bill during the provincial hearings and highlighted key issues that were not adequately addressed in the Bill. SALGA indicated that the Bill being considered by the provinces represented an improved version that has responded to some of the key issues that were raised by SALGA during the previous rounds of consultation. However, SALGA raised further key issues which they felt had to be addressed before the Bill could be passed.

The detailed issues alluded to by SALGA in the paragraph above have been attached to this Committee report as an annexure.

6.1.4. Department of Cooperative Governance and Traditional Affairs (COGTA)

The Committee considered the submission from the provincial Department of Cooperative Governance and Traditional Affairs (COGTA) on the Bill, noting that the department **supported the Bill in its current form and only recommends that the provisions for the development of a Spatial Development Framework in the Municipal Systems Act, 2000 be reviewed to ensure it is not in contradiction with the SPLUM Bill provisions.**

A general comment from COGTA is that there is no clear distinction whether the Bill is a framework or regulatory law. If the intention is for the law to stand alone there are parts that are not regulatory enough.

COGTA indicated that they were developing an MOU with the MHTL in terms of Clause 23(2) of the Bill and that they would also support municipalities that needed assistance.

6.1.5. ESKOM

The Committee noted Eskom's point of view in the following written submission on the Bill:

- a) Eskom indicated that It was not clear from the Bill as to which sphere of government would have the final say in instances where they cannot agree on an application, particularly in those instances where a project spans through more than one Municipality or Province;
- b) Furthermore, Eskom indicated that the application of the Bill means, for example that for construction of power lines that crosses different municipalities, Eskom, will have to apply to all the affected municipalities for approval. The prospect of one municipality objecting or delaying the approval will cause enormous delay, inconvenience and may be very costly in that it may even necessitate a deviation of the line and the cost of deviating a 132KV line may amount to R1.5 million per kilometre with the costs being much higher for a Transmission line.
- c) **Therefore, Eskom's view is that the Bill gives municipalities far wider powers than was ever intended by the Constitution, and should seriously be reviewed. They felt that the impact of the proposed legislation will cause enormous delays on delivery of projects as well as on costs.**

To give effect to the views above, Eskom submitted the following proposals for consideration:

- a) It would be best to have a single national planning legislation. However, in the absence of that, Eskom proposes that they and other entities that offer essential services should be exempted from the application process in the proposed legislation;

6.1.6. CRH Clanahan & Associates (Civil Engineering & Environmental Management)

CRH Clanahan & Associates raised a concern on **Schedule 2** of the Bill and the definition of the word "industrial". The following proposals were submitted as representative of the civil engineering and environmental management sector:

- a) The word "**Industrial**" should be formally sub-divided into "**Light Industrial**" and "**Heavy Industrial**" for the purpose of assisting in planning and determination of rates.
- b) Furthermore, it was indicated that Light Industry can be carried out on small portions of land and in close proximity to all other zoned areas, whereas Heavy Industry requires large portions of land separated by open space from most other zoned areas. This also normally requires rail and major road access and in particular, electricity and water supply.

6.1.7. South African Property Owner's Association (SAPOA)

The legal representatives of the SAPOA made a detailed submission to the Committee. The advice of the Committee's legal team, after they had scrutinized the submission, was that the SAPOA submission referred mainly to the Mpumalanga Planning Bill, which will be tabled in the Legislature only after the SPLUM has been passed.

Therefore, the Committee notes the submission from the SAPOA and will consider it in detail once the SPLUM has been promulgated and the Mpumalanga Planning Bill has been tabled in the Legislature for consideration.

6.1.8. Inputs from other stakeholders

The other stakeholders that attended the briefing did not submit written comments but made verbal comments during the briefing:

- a) The Department of Economic Development, Environment and Tourism (DEDET) and its parastatals (MEGA, MTPA and MGB) supported the Bill as it was favourable to the mandate of the DEDET.
- b) The Department of Human Settlements (DHS) also supported the Bill, but noting that the Bill seemed to be extending the turnaround time to complete human settlements instead of fast tracking it.

6.2. PUBLIC HEARINGS

The public hearings on the SPLUM Bill were conducted on 10 May 2013 as follows:

| DISTRICT | VENUE |
|--------------|---|
| Ehlanzeni | Masoyi, Mbombela Local Municipality (Manzini Community Hall) |
| Gert Sibande | Lothair, Msukaligwa Local Municipality (Community Hall Lothair) |
| Nkangala | Vaalbank, Dr JS Moroka Local Municipality (Community Hall Vaalbank) |

- a) The Honourable Members of the Committee, who were deployed at the various venues, explained to the members of the public that the purpose of the public hearings was to do what Clause 118(1) of the Constitution of the Republic of South Africa directs the Legislature to do, namely, involve the public in the processes of the Legislature.

- b) The Committee Members interacted with the public about the significance of the Bill and the importance of them complying with legislation.
- c) The DRDLR officials deployed to each public hearing further explained the Bill to the public and what its implications would be, once passed.

The following categories of stakeholders attended the three public hearings:

- Community members
- Department of Rural Development and Land Reform (national)
- Department of Agriculture, Rural Development and Land Administration
- Department of Cooperative Governance and Traditional Affairs
- Mpumalanga House of Traditional Leaders
- Mbombela Local Municipality
- Dr JS Moroka Local Municipality
- Msukaligwa Local Municipality
- Department of Economic Development, Environment and Tourism
- SASCO
- Mpumalanga Tourism and Parks Agency and SANPARKS
- Mpumalanga Gaming Board
- Mpumalanga Development Tribunal
- Eskom
- White River Rate Payer's Association
- Elaikin Development Projects
- Secretariat: Township Board
- SAPS Masoyi

6.2.2. Input by the public during the public hearings

- a) The people participated in the above-mentioned discussions by constructively engaging the Legislature through questions and comments on the Bill. The public had no clear objections to the Bill.
- b) One of the important inputs raised was that the legal effects of the municipal Spatial Development Framework should be considered for inclusion in the Bill.

- c) The issues that were raised by the public pertained mostly to the role of the local municipality vis-a-vis the traditional authorities. The submission from the MHTL reflected on page 6 is linked to the input from the public in this regard.
- d) The public proposed an amendment that municipal planning tribunal (MPT) should have a traditional leader as an ex-officio member.
- e) It was clear that the communities had a vested interest in land related issues and they were well aware of the implications of land development matters.
- f) The Committee appreciated the constructive inputs on the Bill, which were made by the public and invited stakeholders, in line with the purpose of the public hearings.

7. COMMITTEE OBSERVATIONS

7.1. Observations on the Bill

The following observations emanated from the Committee's consideration of the Bill:

- a) The Committee is of the view that since the Bill aims to give powers to municipalities to coordinate the management of land, the municipalities should then prioritize the concerns of people living in rural areas when spatial planning is done.
- b) The municipalities should work closely with the traditional authorities when considering zoning of land issues as well as the applications for land use agreements; there should be a collaborative effort.
- c) The traditional authorities should be part of decision-making processes and thus should be adequately represented in the Planning tribunals.
- d) The Committee noted that the DARDLA actually has the function to implement the Bill but was not adequately funded.
- e) The concerns of the business community and the specific sectors that support the sustainable use of land and natural resources should always be taken into consideration by the municipalities when planning for the development of land and when considering land use applications.

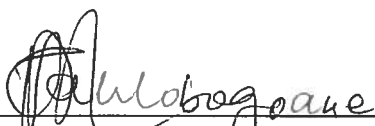
7.2. Observations on the public hearings

The following observations emanated from the Committee's consultation with the public:

- a) In consideration of the SPLUM Bill the Committee facilitated the public's involvement by educating them about the implications of the Bill and then soliciting their views on the critical issues concerning land usage, development and ownership.
- b) The Committee's call for written comments on the Bill, as published in the print media was successful in that substantial written comments were received from affected and interested stakeholders.
- c) After carefully examining the Bill and considering the inputs from the public consultation process, as well as the written comments received on the Bill, the Committee concludes that the SPLUM Bill is progressive in essence and thus is in favour of the Bill. **The Committee's over-arching observation is that the public supported the main objectives of the Bill.**

9. CONCLUSION

In light of the above conclusion, the Committee thus recommends that the House confer the necessary mandate upon the Permanent Delegate representing the Province of Mpumalanga in the NCOP to negotiate in favour of the Spatial Planning and Land Use Management Bill, 2012 [B14B-2012] taking into account the inputs, observations and proposals contemplated in this Committee report.



HON. RC MAHLOBOGOANE (MPL)

2013-05-31

DATE

**CHAIRPERSON: PORTFOLIO COMMITTEE ON
AGRICULTURE, RURAL DEVELOPMENT AND
LAND ADMINISTRATION; ECONOMIC DEVELOPMENT,
ENVIRONMENT AND TOURISM**

