

Land Use Management Bill

A FIRST STEP TOWARDS ENDING SPATIAL FRAGMENTATION?

The Department of Land Affairs has tabled the long-awaited Land Use Management Bill, No. 27 of 2008 (the Bill). The Bill, scheduled to be passed this year, attempts to give effect to the 2001 White Paper on Spatial Planning and Land Use Management by establishing a coherent regulatory framework for land use management across the country. It is designed to clarify land use management roles among different spheres of government and establish a uniform structure and set of principles for reviewing and deciding development applications.

Land use schemes

The Bill requires district and local municipalities to prepare land use schemes to replace their current town planning or zoning schemes within two years of the start of the Bill. However, since districts do not currently maintain land use schemes, it is unclear how a district should relate to the land use schemes of its local municipalities. Land use schemes must cover the entire territory of the district or local municipality and can be one scheme for the whole area or different sub-schemes for smaller areas. Land use schemes and municipal spatial development frameworks must be aligned with the municipality's integrated development plan and must give effect to national and provincial spatial development frameworks and other similar instruments. Once adopted and published in the *Provincial Gazette*, the land use scheme has legal effect and replaces all existing town planning or zoning schemes.

Land use regulators

The Bill makes land use regulators responsible for reviewing and approving development applications in accordance with

the land use schemes for the area under development, and for approving changes to the schemes where necessary. Land use regulators is a term used to refer to municipal councils, development tribunals, or other bodies responsible for managing land use.

Municipal

All district and local municipalities are requested to establish land use committees to regulate land use within their municipality. Groups of two or more municipalities also have the option to establish a joint committee.

Committees should have three to 15 members and be made up of municipal officials and employees. Members are appointed by the municipal executive and serve for three years. At least three of them must have a background in land use management and the chairperson and deputy chairperson must be senior staff members of the municipality. Municipalities can also appoint people who are not municipal officials or employees to serve as non-voting members.

The Committee of a metropolitan or local municipality will decide all land development applications falling within its boundaries, unless the application directly affects land beyond those boundaries. District land use committees will decide applications for land falling within the district that straddles the boundaries of two or more of their local municipalities.

Provincial

At the provincial level, a tribunal and an appeals tribunal will be established in each province. Tribunals will have five to 15 members who are appointed by the premier through a public nomination process and will serve for three years. Members must have a background in land use management and cannot be elected representatives. The Bill does not require tribunals to include either provincial or local government representatives, as is currently the case under the Development Facilitation Act. However, provincial and local officials may be appointed should the premier choose to do so.

Provincial tribunals decide applications:

- straddling the boundaries of metropolitan or district municipalities if they affect provincial interests;
- redirected to them as a result of “undue delay” at the municipal level, or on other grounds; and
- for certain categories where the municipality applies for development of land in its own territory.

Appeals tribunals hear appeals of municipal decisions.

National

The Bill establishes the Minister of Land Affairs as the National Land Use Regulator. The minister may decide applications affecting the national interest; or those redirected to the ministry as a result of “undue delay” at the provincial level, or on other grounds; within a certain category; and on appeal from the provincial appeals tribunal.

Reviewing and deciding applications

On receiving a development application, municipal land use committees must notify all those it affects, invite them to present their views, and gather information through written statements.

Committees must decide applications in accordance with their land use (or town planning) schemes, or – where no scheme applies – in accordance with the “permitted uses” listed in Schedule 1 of the Act. These decisions should be guided by the directive principles of equity, efficiency, integration, sustainability and fair and good governance. Furthermore, they must be consistent with norms and standards, and national, provincial, and municipal spatial development frameworks and other similar instruments.

Committees may approve applications (i) to change the use, form or function of the land, or (ii) to remove, amend or suspend restrictive conditions. These include applications for:

- establishing a township;
- subdividing land;
- consolidating different pieces of land;
- amending a land use or town planning scheme; or
- removing, amending or suspending a restrictive condition.

The committee may approve applications subject to conditions which it determines. These are assumed to include contribution requirements for developing certain areas. However, there is no specific reference to contributions in the Bill.

Comment

While the Bill is intended to serve as broad framework legislation, it fails to provide the clarification necessary for such a framework in two important respects.

First, it does not clearly specify the role for each sphere of government, or between district and local municipalities with respect to land use management. Schedules 4 and 5 of the Constitution allocate different planning and land use management-related functions to local and provincial governments. However, the Constitution does not define what each of these entails. Parliament is best placed to clarify what local government’s “municipal planning” function entails and how it compares with, for example, the “regional planning and development” function of the national and provincial government. However, the current Bill does not include such definitions. As a result, it is difficult to assess what it means when the Bill wants provincial and national land use regulators to decide applications affecting “provincial or national interests”. Moreover, these “interests” are defined so broadly that they create the potential for national and provincial governments to encroach on the “municipal planning” function.

In addition, the Bill improperly allocates responsibility to districts to develop and maintain land use schemes; a function which is out of sync with the division of powers between district and local municipalities under s 84(a) of the Municipal Structures Act, 117 of 1998 and which districts do not currently perform.

Second, while the Constitution does provide national and provincial governments with supervisory powers over municipal planning, certain provisions in the Bill overstep these powers. For example, s 51(2) makes land use schemes subject to national and provincial spatial development frameworks and other policy instruments, which are not legally defined. Thus, anything that national or provincial government decides to label as a policy instrument could be used to restrict local governments in exercising “municipal planning”.

In addition to these framework issues, the Bill is unable to address the larger problem of procedural duplication for new development as required by various pieces of sectoral legislation. How to deal with this issue remains an open question, and cannot be accomplished within the scope of the Bill. It does, however, pose a considerable barrier to the Bill’s passage, as opponents would prefer to see an integrated process for addressing environmental, heritage and planning concerns.

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For a more detailed assessment of the Bill, see the
Local Government Project’s submission at
www.commmunitylawcentre.org.za.