PARLIAMENT OF THE PROVINCE OF THE WESTERN CAPE

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ANNOUNCEMENTS, TABLINGS AND COMMITTEE REPORTS

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MONDAY, 3 JUNE 2013

COMMITTEE REPORT

The Speaker:

(Negotiating mandate stage) Report of the Standing Committee on Agriculture and Environmental Planning on the *Spatial Planning and Land Use Management Bill* [B 14B–2012] (NCOP), dated 31 May 2013, as follows:

The Standing Committee on Agriculture and Environmental Planning, having considered the *Spatial Planning and Land Use Management Bill* [B 14B–2012] (NCOP), referred to the Committee in terms of Standing Rule 220, confers on the Western Cape's delegation in the National Council of Provinces the authority to support the Bill with the following amendments:

1. Clause 5(1) should be amended to express the competence of provinces to exercise executive authority in matters of an inter-municipal nature (which does not encroach on intra-municipal executive authority relating to land planning).

   The following amendment should be made on page 9 from line 1:

   5(1)

   (c) the control and regulation of the use of land within the municipal area; and
   (d) where the nature, scale and intensity of the land use affect the provincial planning mandate or the national interest, the control and regulation of the use of land within the municipal area subject to the additional provincial or national approval of the extra-municipal effects of the use of land.

2. The Bill should be amended to provide that provincial spatial development frameworks must be reviewed every ten (10) years as opposed to every five (5) years.

   Line 13 on page 15 of the Bill should be amended and "*five*" should be replaced by "*ten*".

3. Clause 5(1)(c) stands to be interpreted in such a manner that it may exclude the municipal regulation and control of land intra-municipally in circumstances where the nature, scale and intensity of the land use affect provincial planning or the national interest.

   The amendment proposed in paragraph 1 will also clarify the position here.

4. The definition of a "region" in the Bill is materially different from the definition of a "region" in the (provincial) *Land Use Planning Bill*. Whereas the definition in the provincial legislation views a region as an area straddling municipal boundaries, the Bill views a region as any area that shares distinct economic, social or natural features.

   The following amendment should be made on page 7, line 51 of the Bill:

   "region" *means a geographical area consisting of the areas, or parts of the areas, of more than one province.*

5. It is not clear from clause 9(1)(b) that the provinces will be primarily responsible for the monitoring of municipal land planning. Overlapping monitoring functions are likely to lead to unnecessary duplication and expense. The provinces should bear the primary monitoring responsibility with the national government stepping in when direct monitoring within the provincial system fails.

6. There are a number of areas where the overlap between the Bill and the *Local Government: Municipal Systems Act, 2000, Act 32 of 2000* will create difficulty in the planning system. These areas include conflicting provisions relating to the publication of municipal spatial development frameworks, conflicting provisions concerning public participation and conflicting dispute resolution procedures.

   Express provision should be made in the Bill that the procedures in the *Municipal Systems Act*, relating to the approval and amendment of and the dispute resolution procedures in respect of integrated development plans, are not applicable to spatial development frameworks.

   Alternatively, the necessary textual amendments must be made to the *Municipal Systems Act*, which is the preferable approach.

7. Clause 45(2) of the Bill allows for intervention in applications. This provision will result in undue delays in the application procedure and the provision should be removed from the Bill. The Bill already provides adequate opportunity for public participation.

   On page 26 from line 14, omit subclause (2).

8. A general transitional clause must be inserted into the Bill. It is not clear whether an exemption will be granted in terms of the Bill in circumstances where a provincial spatial development framework had been approved prior to enactment of the Bill.

   The following amendment should be made:

   15(8) The Premier may declare a provincial spatial development framework or similar policy that substantially complies with the requirements of section 12 and that was approved before commencement of this Act in terms of procedures that comply with subsection (6), as a provincial spatial development framework in terms of subsection (1).

   15(9) The Premier must publish a notice of the declaration contemplated in subsection (8) in the Provincial Gazette.

9. The reference in clause 22(2) of the Bill to "*site-specific circumstances*" should be deleted. It is not clear what the content and meaning of this term is. A municipality may depart from policy guidelines where an applicant demonstrates exceptional circumstance in an application that warrants departure on a rational basis.

   On page 18 from line 10, omit the words "*only if site-specific provisions of a municipal spatial development framework justify a departure from the provisions of such a municipal spatial development framework*".

10. The intention of clause 28 is not clear. It is unclear whether the rezoning of land that a municipality does not own takes place by way of application or *mero motu* by a municipality.

    The clause should be reworded to clarify its intent.

11. Clause 44 of the Bill, read together with clause 40(9), empowers the (national) Minister to prescribe maximum decision times. The view is expressed that these are matters that should be prescribed by the provinces.

    On page 25 in line 5, after "*period*" the phrase "*unless provincial legislation prescribes a different period*" should be inserted.

    On page 25 in line 55, after "*subsection (1)*" the phrase "*unless provincial legislation prescribes a different timeframe*" should be inserted.

12. The Bill should provide that the norms and standards, referred to in clause 42(1)(b) of the Bill, are capable of variation by the provinces and that these norms and standards must be drafted in consultation with the provinces.

    A steering committee, consisting of national, provincial and local officials with expertise in land planning, should be established to determine such norms and standards.

13. The regulatory authority of the (national) Minister, with reference to clause 54 of the Bill, is too extensive. The regulation of the operating procedures of Municipal Planning Tribunals or the regulation of procedures relating to the lodging of applications may encroach on municipal planning.

    The Bill should make provision only for *minimum standards* for the control and regulation of land use by municipalities, and these minimum standards should only apply within provinces that have not regulated these matters intra-provincially.

14. It is not clear what a "*conditional approval*" in clause 43(2) means. If it is the intention to provide for a maximum validity period for all approvals, the reference to "*conditional*" should be deleted. If it is the intention to refer to conditions that should be adhered to before the land use approval may be implemented, the provision should refer to approvals that are subject to suspensive conditions.

    On page 25 from line 43, omit "*A conditional approval of an application*" and substitute it with "*An approval of an application that is subject to a suspensive condition*".

    Or alternatively, on page 25 from line 43, omit subclause 2 and substitute it with the following:

    (2) An approval of an application lapses after a period of ten years from the date of such approval unless provincial legislation provides for a shorter period.

15. The application of the Bill to linear infrastructure will have a significant impact on entities such as ESKOM. Approval will have to be obtained from all municipalities for electricity reticulation. Such projects should be exempted from the Bill and clear provision should be made for approval of such projects by provincial and/or national authorities.

16. Clause 15(7) of the Bill requires the publication of a provincial spatial development framework, and any amendments to such a framework, in the *Provincial Gazette* and in the media. This will have a significant financial implication.

    On page 15 from line 24, omit subclause (7) and replace it with the following:

    (7) A provincial spatial development framework must be approved by the Executive Council and notice of the decision to approve the provincial spatial development framework or an amendment thereto must be published in the Provincial Gazette and the media.

    Clause 17(1), on page 15 from line 45, should be omitted.

17. Clause 10(2) of the Bill is unclear. How can provincial legislation provide for structures and procedures that are different from the Bill in a manner that is nevertheless consistent with the Bill?

The Bill must identify the specific provisions of the Bill from which provincial legislation may deviate.

18. A zoning scheme, with reference to clause 25, cannot be *consistent* with a municipal spatial development framework since the last-mentioned guides future development policy and the first-mentioned determines land use rights.

    On page 19 in line 15, omit "*and be consistent with*".

19. Clause 26(5) of the Bill appears to provide that a land use scheme may only be amended if all the listed criteria in clause 26(5) are met. This appears contrary to clauses 25 and 28. Clause 26(5) should be amended so that it is clear that all the criteria in clauses 25 and 28 must apply to an amendment contemplated in terms of clause 26(5).

    On page 19 from line 46, omit subclause (5) and replace it with the following:

    (5)Subject to sections 25 and 28, a municipality may, after public consultation, amend its land use scheme if the amendment is at least –

    (a) in the public interest; and
    (b) to the advantage of, or in the interest of, a disadvantaged community.

20. Clause 36(1) of the Bill determines that a Municipal Planning Tribunal must include persons who are not municipal officials. This will be difficult, impractical and costly for smaller municipalities.

    On page 23 in line 2, omit "*must*" and on page 23 in line 4, after "*(b)*" insert "*may include*".

21. Clause 54(4) of the Bill provides that, until the Minister makes regulations, the regulations in force under any law repealed by section 59 will remain in force despite the repeal. This is problematic since some of the laws to be repealed by section 59 will be repealed by provincial legislation. Once repealed by provincial legislation, clauses 59 and 54(4) suggest that these laws will nevertheless apply until the Minister makes regulations.

    Add the following subclause to clause 54:

    (5) Subsection (4) does not apply if a provincial law repeals any law referred to in Schedule 3 which has been assigned to a province.

22. Coordinated national and provincial implementation of the Bill is necessary. The implementation of the Bill should not necessarily take place on the same day for all the provinces.

    On page 31 after line 36, add the following subclause:

(3) Different dates may be determined under subsection (2) in respect of different municipal areas and provinces.

23. A number of areas, listed in Schedule 1 of the Bill, fall within the ambit of municipal planning. Municipalities have the authority to make detailed rules on these matters and provinces may establish minimum standards.

    Schedule 1 should be amended to provide for provincial legislation on minimum standards for the municipal planning matters listed in the Schedule.

24. Clause 27 of the Bill, referring to land use schemes, should be amended (on page 19 in line 56) to omit "*five*" and insert "*ten*".