



09 July 2008

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Dear Ms Koff

## REPRESENTATIONS ON THE LAND USE MANAGEMENT BILL

Urban Land Mark is a DfID-funded programme aimed at promoting greater access by poor people in South Africa to well-located urban land. Our focus is on making urban land markets work better for the poor. In this regard a number of regulatory instruments are critically important. One of the most important of these is land use management. Over the past two years Urban LandMark has conducted wide-ranging research into the question of why it is so difficult for poor South Africans to benefit from an urban land market that has very successfully benefitted and enriched better-off South Africans. A consistent theme running through this research is that the State can only achieve pro-poor urban land market outcomes where there is effective and appropriate land use management and regulation. The maze of overlapping, unequal, discriminatory and often unimplementable legislation, almost all of which dates back well into the apartheid era, militates against any efforts to redress the effects of decades of discrimination.

A bill such as the Land Use Management Bill (LUMB) is urgently needed for the following reasons:

1. There is widespread uncertainty as to where the various legislative and executive powers to regulate land use and land development lie. Simply put, there is ongoing uncertainty as to which sphere of government is empowered to do any one of the numerous aspects of land use management. An Act of Parliament that clarifies this will be extremely useful.
2. The challenge of addressing spatial patterns inherited from apartheid is immense. New and improved legislation is but one element of that challenge, albeit a centrally important one. Strong and clear guidance is needed from national government to provincial and municipal government as to how go about regulating land use and land development better in a post-apartheid era.
3. In particular, the technical complexity of unravelling the morass of legally enforceable - and often financially very valuable - development rights created in terms of, among others, the four Provincial Planning Ordinances of the old RSA, which remain in force in 8 of the 9 provinces is huge. This complexity needs to be rationalised and reduced.
4. The overlapping approvals required for land use planning, environmental management and heritage, to name but a few, makes for a highly complex and inefficient system that frustrates investors on the one hand, but also provides numerous opportunities for well-resourced objectors to new housing or other integrative land uses to assert their rights to

participate in decision-making in a way that ultimately thwarts the intention to reverse the spatial patterns of apartheid.

Unfortunately the LUMB in its current format does none of the above:

1. In relation to the uncertainty over legislative and executive powers the LUMB in fact worsens rather than improves the situation. The existing, inherited planning legislation remains in place (with the exception of the Development Facilitation Act which is repealed). Consequently the structures and processes prescribed in the LUMB are laid over an already complex and inappropriate set of structures and processes, without clarifying how the new ones will relate to the old.
2. There is nothing in the LUMB that will make it easier for municipalities, or other spheres of government, or even the private sector, to address apartheid's spatial planning legacy. The only suggestion in this regard is the power given in clause 5 to the Minister to determine and prescribe compulsory norms and standards for land use management, when what is needed is a law that is premised on a clear understanding of what these norms and standards should be. The Department of Land Affairs has been engaged with the reform of planning law since 1996 and it is regrettable that 12 years later there is still no substantive idea of what sort of planning law is needed for South Africa's town and cities. This is despite the fact that the Development & Planning Commission (1998-2001), set up by the Ministers of Land Affairs, Housing and Provincial & Local Government produced a comprehensive Green Paper on Planning & Development in 1999, which was expanded by the Minister of Land Affairs into a White Paper in 2001.
3. There is currently only one effective mechanism for cutting through the complexity of the inherited planning laws. This is the Development Facilitation Act. The LUMB proposes to repeal this Act and to introduce yet more complexity and confusion into the system. The DFA certainly has its flaws and needs legislative reform, but in many parts of the country it is invaluable as the only effective way of securing legal permission to develop land. It also includes highly innovative measures to introduce a more responsive and efficient system of considering and deciding applications to develop land. All of this will be lost with the enactment of the LUMB in its current form.
4. The LUMB is virtually silent on the multiple approvals required for land development projects, especially those relating to environmental and heritage approvals.

It is important to emphasise that a bill such as the LUMB is needed. Almost all metros as well as provincial governments agree that it would be extremely useful to have a clear and coherent national legislative framework governing land use and land development management. At least this framework should provide:

- clear guidance as to each sphere's responsibilities;
- a clear legal path to the scrapping of apartheid legislation and the transition of inherited regulatory systems into ones able to reflect current political and economic challenges;
- an efficient, effective relationship between the planning laws regulating land use and development and environmental and other laws doing the same thing; and, finally
- mechanisms for effectively and equitably fast-tracking identified projects in specified circumstances.

A draft LUMB that meets these targets will be widely welcomed. The current document in effect makes it more rather than less difficult to manage land use and land development in the interests of the poor or of spatial integration.

Because of the crucial importance of this draft legislation to the work of Urban LandMark we have entered into a partnership with TIPS in the Presidency to conduct a Regulatory Impact Assessment on the LUMB.

Work on this process will commence in August 2008 and will run until the end of September. Should the Portfolio Committee or any other structure of parliament wish to engage with this process we would be most happy to facilitate whatever participation you feel is appropriate. Urban LandMark is fully committed to working with government to improve the LUMB to a point where it can confidently be expected to play the crucial role that is needed.

We would very much like to make a representation at the Hearings of 30 and 31 July, where we will be able to answer any questions that the Committee may have, as well as provide specific examples of the bill's shortcomings if that is requested. Please let us know when during that period we will be able to address the committee.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'M Napier', with a stylized, cursive script.

Mark Napier  
Programme Director : Urban LandMark