

**LEGISLATIVE IMPACT ASSESSMENT REPORT**  
**SPATIAL PLANNING BILL**

**1. TITLE OF THE PROPOSAL**

- a) Title: The Spatial Planning Bill of Bhutan
- b) Type of legal measure: Act
- c) Lead Ministry: Ministry of Works & Human Settlement (MoWHS)
- d) Date of approval of legislative proposal: 12th September 2017 Expected date of adoption Day/Month/Year: July, 2022

**2. THE BACKGROUND OF THE PROPOSAL**

The rapid progress in socio-economic parameters, increasing urban population, and vulnerability of suitable land to natural hazards adds to the development pressure on the limited available land. Absence of legislation specific to spatial and human settlement planning has constrained development initiatives and interventions. Human settlement planning and development till date has been functioning without dedicated legal instruments to support effective planning and enforcing of compliance to Development Control Regulations to ensure that all development plans are implemented as per the approved plan. In its absence, transparency and public participation in the planning process were weak with lack of grievance redressing mechanisms for those affected by planning schemes. Land use management and rural - urban integration were not fully facilitated through planning and regulations. The role of agencies involved in the planning and development were not clearly defined.

Recognizing these limitations and a need for such a specific legal framework to address the issues, the Ministry of Works and Human Settlement sought the approval of the *Lhengye Zhungtshog* to draft the Bill. The 143rd *Lhengye Zhungtshog* held on 12th September 2017 accorded the approval to draft the Bill.

The Spatial Planning Bill will provide for an integrated approach to planning sustainable and livable human settlement in the country. The Bill will regulate plan initiation, preparation, approval, implementation and administration; prescribe the levels and categories of plans, planning procedures, techniques and also give legal effect to the development control regulations to make the best use of the country's available land. The Bill addresses the deficiencies confronted by the sector in the absence of a specific legal instrument in regulating appropriately.

**3. MAIN OBJECTIVE OF THE PROPOSAL**

- a) Implement plans and policies of spatial related planning and development in a coherent and effective manner.
- b) Ensure optimal and sustainable use of physical space and natural resources that capitalizes on the potential and comparative advantages of different areas, locations and regions.
- c) Institute a comprehensive planning system that is most efficient and sustainable.
- d) Harmonize conflicting provisions of various legislations, policies, strategies related to human settlement planning and development, and

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- e) Coordinate and integrate sectoral policies and plan on transport, industry, agriculture, forestry and culture, etc.

**4. POLICY RATIONALE FOR THE PROPOSAL**

The proposed Act seeks to address the following issues:

- a) Currently, legal support for land use planning is drawn from the related clauses and provisions of the Land Act and the Local Government Act. These legislations fail to serve purposes specific to settlement planning. The Land Act was drafted with focus on land and the Local Government Act with focus on administration and management of local governments. Depending on such incidental provisions of other laws fails to adequately address the challenges of human settlement.
- b) The roles, functions and powers of different agencies involved in the planning processes are not clearly defined. Lack of a clear established planning system has resulted in individual initiatives, leading to different planning approaches when it comes to areas of identification, designation and release of land, including conversion of land uses. It has created ambiguities leading to misconceptions both by agencies and the public alike. The Bill proposes a hierarchical planning system, consisting of national, regional and local level plans, clearly mentioning who can prepare the plans and who has the authority to approve the plans.
- c) Lack of legal basis for plans and the development control regulations results in poor enforcement and implementations.
- d) A system of appeal for those affected by planning and land use is lacking. It is important to institute such a system for improved transparency, fairness and participatory planning process. Opportunities for grievances affected by the planning schemes must be provided.

**5. OPTIONS TO ACHIEVE THE OBJECTIVES**

The following two options were considered to achieve the objectives;

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### **Option 1: Introduction of the Spatial Planning Act**

Introduction of the Spatial Planning Act would provide a legal basis for preparation and enforcement of plans and the development control regulations. This will ensure that all development plans are implemented as per the approved plan. This would also enhance transparency and public participation in the planning process and provide for proper grievance redressing mechanisms for those affected. Further, the Act will provide clear delineation of roles, responsibilities and accountabilities for agencies involved in planning and development.

### **Option 2: Function as it is without proper legal framework**

This option considers addressing the varied spatial planning and development issues and challenges with no clear legislative framework. This will entail working with current challenges and difficulties in enforcement of planned development. While the Ministry will try to perform its mandates with due diligence even without a legislative framework, it could lead to poor implementation and weak enforcement resulting in haphazard development of human settlements.

Therefore, the option of drafting of the Spatial Planning Act was the preferred.

## **6. IMPACTS EXPECTED FROM THE DIFFERENT OPTIONS IDENTIFIED**

### **Option 1: Introduction of the Spatial Planning Act**

#### **Positive impacts**

The following are some of the key positive impacts, amongst others:

- Promote coherent, inclusive, safe, livable and sustainable human settlement.
- Provide legal standing/backing to the initiation, preparation, approval and implementation of settlement plans and its Development Control Regulations.
- Promote conservation of the natural environment, preservation of tradition and culture and strengthening of good governance.
- Align human settlement planning and development with the national goals and objectives.
- Regulate plan preparation, planning procedure and techniques.
- Reduce administrative burden through clearly defined roles, responsibilities and accountability of agencies.
- Strengthen participatory planning and development approach.
- Institute grievance redressal system for human settlement planning and development.
- Promote robust urban governance and bring clarity in the roles of the LGs and the central agencies.
- Enhance collaboration of stakeholders including residents and landowners.
- Empower Local governments and agencies to initiate, prepare, implement and monitor human settlement planning and development.

#### **Negative impact**

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- No negative impact anticipated.

**Option 2: Function as it is without proper legal framework**

**Positive impacts**

- No requirement for establishing a Development Review Committee/Board as required by the Spatial Planning Bill.

**Negative impact**

- Since human settlement planning and development is cross-sectoral, though well intended but isolated efforts by the different agencies based on vague mandates will continue to lead to waste of resources and huge public inconveniences.
- No legal framework and legal basis to support initiation, preparation, approval implementation and monitoring of human settlement.
- Unclear procedure and process for the initiation, preparation, approval, amendment and implementation of human settlement plans.
- Existing regulations, standards, guidelines and codes will continue to exist with no legal backing.
- Haphazard unplanned development leading to urban sprawl, squatter settlement, etc.
- High occurrence of non-compliance to approved plans.
- Development on environmentally sensitive and geologically fragile areas citing unclear provisions within other legislations.
- Increased litigation by the landowners for regulating development on their land.
- Prolong plan preparation by the stakeholders (landowners in particular) for not agreeing to planning schemes (such land pooling) and provisions of the plans which have far reaching positive impacts for the larger community in order to protect their self-vested interests.
- Continued unclear and weakened urban governance citing selective provisions of the LG Act 2009 and Amendment 2014:
  - Unclear line of reporting by the LGs;
  - Mixing of the technical and administrative decisions by the agencies and the LGs in their Tshogdus and Tshogdes;
  - Ineffective mechanism to monitor human settlement planning and development. Often late technical intervention;
  - Poor intersectoral coordination and collaboration;
  - No mechanism to fix accountability.
- Duplication of roles and responsibilities of agencies involved in human settlement.
- Top down approach to human settlement planning and development
- No proper grievance redressal system/mechanism.

**7. JUSTIFICATION OF THE PREFERRED OPTION**

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Having vetted the positive and negative impacts of options as outlined above (sl.6), the drafting of the Spatial Planning Act was imperative for addressing issues and challenges in human settlement planning and development. It will also promote human settlements that are environmentally sustainable, economically strong, culturally vibrant and highly livable.

The National Human Settlement Policy 2019 also clearly states the need for a Spatial Planning Act to address the challenges in the human settlement sector.

## **8. POWERS & FUNCTIONS, DECISION MAKERS, DELEGATES AND REVIEW OF DECISIONS**

### **8.1 POWERS AND FUNCTIONS**

#### **Ministry of Works & Human Settlement**

- a) Prepare National Spatial Plan and Regional Spatial Plans and seek approval from the Cabinet;
- b) Prescribe procedure for review and approval of the Regional Spatial Plan, if the Dzongkhags have initiated its preparation;
- c) Provide policy directives, strategies, standards and guidelines for the spatial planning and development;
- d) Make rules and regulations for the implementation and administration of the Act;
- e) Review and approve Valley Development Plans and Structure Plans;
- f) Monitor and audit local governments in their exercise of powers and functions under the Act;
- g) Research planning approaches, techniques and standards;
- h) Prepare Spatial Plans for local governments or participate in preparation, at their request and by agreement;
- i) Provide advice and technical support to local governments and other agencies, departments or organizations involved in planning and development control matters;
- j) Notify the public in matters related to planning; and
- k) Carry out any other power or function as may be prescribed by the Government and any other laws.

*The above functions of the MoWHS are delegated to the relevant department of the MoWHS.*

#### **DZONGKHAGS**

Dzongkhag shall be responsible for the Regional Spatial Plan and Local Spatial Plans within its jurisdiction, except those areas for which Dzongkhag Thromde is responsible, and in that regard shall:

- a) Prepare a regional spatial plan on its initiative in collaboration with Dzongkhags in the region thereof or request the Ministry to prepare a Regional Spatial Plan and participate in its preparation;
- b) Endorse a Regional Spatial Plan prior to its approval by Cabinet;
- c) Further the implementation of the Regional Spatial Plan;
- d) Prepare Local Spatial Plans and administer the procedures for their approval;

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- e) Endorse Valley Development Plans and Structure Plans prior to their approval by the Ministry;
- f) Approve Local Area Plans for areas outside Dzongkhag Thromde and share their copies with the Ministry;
- g) Further the implementation of the Valley Development Plan, Structure Plans and Local Area Plans;
- h) Enforce Valley Developments Plans, Structure Plans and Local Area Plans, including issuing planning permits;
- i) Exercise the above functions and powers jointly with other Dzongkhags under the terms of an agreement where a Regional Spatial Plan or Valley Development Plan covers more than one Dzongkhag;
- j) Provide advice and technical support to Yenlag Thromdes and Gewogs in planning and development control matters; and
- k) Perform such other functions as may be prescribed by the government from time to time and any other laws.

*Dzongkhag may delegate to Gewogs and Yenlag Thromdes certain powers and functions with respect to implementation and administration of Local Spatial Plans, including the power to issue planning permits covering certain types of development.*

**DZONGKHAG THROMDE**

Dzongkhag Thromde shall be responsible for the Structure Plan and Local Area Plans within its jurisdiction, and in that regard shall:

- a) Prepare a Structure Plan and Local Area Plans and administer the procedures for their approval;
- b) Endorse a Structure Plan prior to its approval by the Ministry;
- c) Approve Local Area Plans within Dzongkhag Thromde and share their copies with the Ministry;
- d) Further the implementation of the Structure Plans and Local Area Plans; and
- e) Enforce the Structure Plan and Local Area Plans, including issuing planning permits.

**YENLAG THROMDE AND GEWOGS**

Yenlag Thromde and gewogs shall:

- a) Exercise delegated powers and functions and
- b) Support Dzongkhag in the exercise of its powers and functions.

**8.2 DECISION MAKING CRITERIA**

Decision making criteria are clearly spelt out in the Act and the procedures are and will be provided in the Rules and Regulations.

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### **8.3 REVIEW OF DECISIONS**

The Development Review Committee established under the Act to review the followings;

- a) Whose application for a planning permit has been refused in any case where the local government has the discretion to approve or reject the application; or
- b) Whose application for a planning permit has been approved subject to conditions that are unacceptable to the applicant; or
- c) Who is the recipient of a stop work or enforcement order or whose planning permit has been revoked under the Act.
- d) Other matters that may be the subject of a review by the Development Review Committee.

### **9. STAKEHOLDER CONSULTATIONS**

- The draft bill was presented to the Cabinet of the previous and current government and Desna meet program.
- All relevant line Ministries, 20 Dzongkhags, 4 Thromdes, autonomous agencies, CSOs, NGOs, SOEs, corporations, private entities were consulted to get their observations and comments on the Spatial Planning Bill.
- The Office of Attorney General was also consulted during the process of drafting.
- The 8th Engineers, Architects and Planners Conference held on 7th June 2017 also discussed and resolved the enactment of the Spatial Planning Act.
- Following are the list of stakeholders consulted:
  1. Office of Attorney General
  2. Ministry of Agriculture and Forest
  3. National Land Commission
  4. 20 Dzongkhags
  5. 4 Thromdes
  6. National Environment Commission
  7. Gross National Happiness Commission
  8. Road Safety and Transport Authority
  9. Tourism Council of Bhutan
  10. National Housing Development Corporation Ltd.
  11. Ministry of Finance
  12. Department of Local Governance, MoHCA
  13. Health Infrastructure Development Division, MoH
  14. Royal Institute of Management
  15. National Statistical Bureau
  16. Department of Culture, MoHCA
  17. Construction Development Board
  18. School Planning and Design Division, MoE
  19. Department of Industry, MoEA
  20. Department of Road, MoWHS
  21. Department of Engineering Services, MoWHS
  22. PPD, MoWHS