

Municipal planning in terms of the Spatial Planning and Land Use Management Act 16 of 2013 (SPLUMA) – the necessary content of enforceable bylaws

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**Strengthening local government legislative authority in
South Africa - enforcing municipal by-laws**

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Enforcement

Enforcement/compliance

Enforcement: Actions taken to achieve compliance with the law

Compliance: Adherence to law or legal rules

Municipal Planning?

S 156(1)-(2) of the Constitution read with Schedule 4 Part B

“Municipal planning” is a matter over which municipalities have executive authority and the power to make by-laws

Municipal Planning?

- *City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal*
- *Minister of Local Government, Environmental Affairs and Development Planning of the Western Cape v Lagoonbay Lifestyle Estate (Pty) Ltd*
- *Shelfplett 47 (Pty) Ltd v MEC for Environmental Affairs & Development Planning*
- *Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v The Habitat Council; Minister of Local Government, Environmental Affairs and Development Planning, Western Cape v City of Cape Town*
- *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal*
- *Tronox KZN Sands (Pty) Ltd v KwaZulu-Natal Planning and Development Appeal Tribunal*
- *Shoprite Checkers (Pty) Limited v Premier, Gauteng Provinc*

Municipal Planning?

City of Johannesburg Metropolitan Municipality v Gauteng Development Tribunal para 57

‘planning’ in the context of municipal affairs is a term which has assumed a particular, well-established meaning which includes the **zoning of land** and the **establishment of townships**.

GDT case led to enactment of SPLUMA

Spatial Planning and Land Use Management Act (SPLUMA)

National Act to provide a framework for spatial planning and land use management in South Africa

- + Regulations
- + Provincial Acts
- + Municipal by-laws

SPLUMA – Core Contents

- Development Principles & Norms and Standards
- Spatial Development Frameworks
- Land Management Planning
 - Spatial Development Frameworks
 - Land Use Management (Land Use Schemes)
- Land Development Management
 - Municipal planning Tribunals/Officials that make decisions on development applications (rezoning, subdivision, township establishment, consolidations, removal of restrictive conditions)
- Offences

By-laws

- SPLUMA specifically recognises ‘the unique circumstances of each municipality’ (s 11(1)). In that light it follows that there will be a variety of different sets of by-laws, geared to the specific municipality’s unique circumstances, but in the context of SPLUMA.

Municipal Planning & SPLUMA

Zoning of land and establishment of townships

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graph TD; A[Zoning of land and establishment of townships] --> B[Land management planning]; A --> C[Land development management];
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Land management planning

SDFs

LUS

Restrictive conditions

Land development management

Development applications

Land management planning (forward planning)

Spatial Development Frameworks

Land Use Schemes

Confer use and development rights) (eg zoning, heights, density, building lines)

Restrictive conditions

Confer rights that must be capable of enforcement (eg use)

Land Use Scheme – rights and legal force

A land use scheme-

- (a) provides for **land use and development rights**.
- (b) has the **force of law** and all land owners and users of land, including the municipality, state-owned enterprises and organs of state within the municipality's area of jurisdiction are bound by the provisions of such a land use scheme; (SPLUMA s 26)
- (c) The **municipality has a duty** to comply with and enforce the provisions of its land use scheme.

Restrictive conditions

- Conditions in title deeds that bind owners of land in whose deeds they appear and also vis-à-vis third parties.
- Are unique instruments employed to regulate land use alongside provisions in a land use scheme.
- Are recognised in SPLUMA (eg s 47), are removed in terms of SPLUMA or court order but are common law instruments and enforcement measures in both SPLUMA and case law.
- Take precedence over a land use scheme in event of a conflict.

Enforcement

- SPLUMA s 32(1) A municipality may pass by-laws aimed at enforcing its land use scheme.
- 3 categories
 - Administrative
 - Civil
 - Criminal

SPLUMA contains (wide) provisions to allow for a municipality to enforce its scheme in s 32 and s 58 (criminal) – therefore wise to only include matters in bylaw that are strictly necessary.

ADMINISTRATIVE MEASURES

- Person affected by an alleged contravention may submit complaint
- Municipality designates a person as an inspector/authorised official/compliance officer to investigate non compliance with land use scheme (SPLUMA s 32)
- A compliance notice/contravention notice/directive may be issued that directs a person to:
 - (a) discontinue erection, alteration, addition; and
 - (b) at his/her own expense:
 - (i) remove such building; or
 - (ii) cause such building or use to comply with the provisions of the scheme.
- Administrative penalty for rectification of a contravention

CIVIL MEASURES

- S 32 SPLUMA(2) A municipality may apply to a court for an order-
 - (a) interdicting any person from using land in contravention of its land use scheme;
 - (b) authorising the demolition of any structure erected on land in contravention of its land use scheme, without any obligation on the municipality or the person carrying out the demolition to pay compensation; or
 - (c) directing any other appropriate preventative or remedial measure Eg .
 - Rehabilitate the land
- Other court applications, eg Mandamus to force municipality to comply with its scheme

CRIMINAL MEASURES

Offences (and penalties eg fine)

- use land contrary to permitted land use in terms of a land use scheme (s 58/26(2) SPLUMA);
- alter form and function of land without prior approval (SPLUMA s 58);
- hinder, threaten or obstruct any inspector/compliance officer/authorised employee in the performance of any function (SPLUMA s 58);
- use land for an illegal township (and then request registrar to place a caveat against transfer on title deed);
- use land contrary to a permitted land use in terms of restrictive conditions;
- falsely profess to be an inspector/authorised employee or the interpreter or assistant of such person;
- fail to comply with compliance notice, directive.

Development applications -types

Amendment of land use scheme,
Consent,
Township establishment,
Removal of restrictive condition,
Consolidation,
Subdivision,
Closure of road ...

Decisions on applications are be made by the Municipal Planning Tribunal (Category 1/opposed) or an Official (Category 2).

Municipal Planning Tribunal/official

- Members
- Code of Conduct
 - make decisions fairly, impartially and promptly;
 - no conflict of interest
- Decisions = Administrative action (PAJA)

ADMINISTRATIVE MEASURES

- A compliance notice/contravention notice/directive may be issued that directs a person to comply with condition of approval;
- Withdraw approval of temporary approval;
- Administrative penalty for rectification of a contravention.

CRIMINAL MEASURES

- Offences (and penalties eg fine)
- MPT member must make full disclosure of any conflict of interest (SPLUMA s 58/ 38(3));
- MPT member may not attend, participate or vote in any proceedings of the tribunal in relation to any matter in respect of which the member has a conflict of interest (SPLUMA s 58/38(3));.
- Any person who supplies particulars, information or answers in an application or in an appeal to a decision on a land development application, knowing it to be false, incorrect or misleading or not believing them to be correct;
- contravenes or fails to comply with a decision taken or a condition imposed or deemed to have been taken or imposed by the municipality.

CIVIL MEASURES

- A court application for -
 - Judicial review of administrative action (decision)
 - Appeal against decision

Questions?

Thank you