

'One Environmental System' and Spatial Planning

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Habitat Council

The eventual approval of a 'Sasol 4' development -

'... would depend on myriad authorisations, some of them provincial, some of them local'.

*Minister of Local Government, Environmental Affairs and
Development Planning, Western Cape v The Habitat Council and
Others [2014] ZACC 9 para 19*

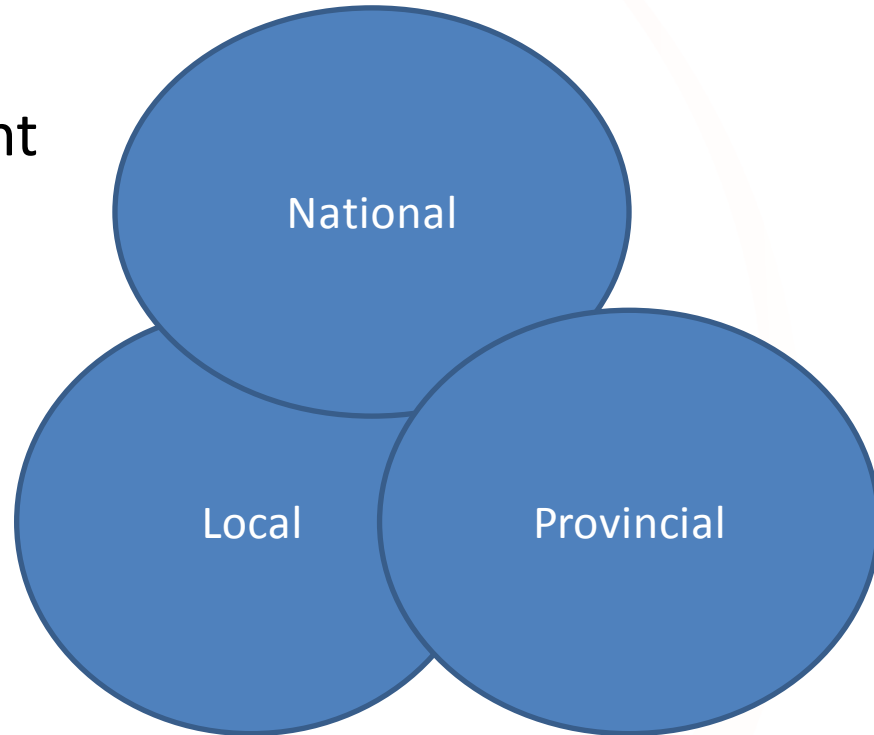
Lagoon Bay

‘... while a comprehensive land-use regime calls for integrated and coordinated interaction on the part of provincial and municipal government, it goes without saying that the one may not usurp the powers of the other.’

Lagoonbay Lifestyle Estate (Pty) Ltd v Minister for Local Government, Environmental Affairs and Development Planning of the Western Cape Others ([2013] ZASCA 13 para 8

Constitutional context

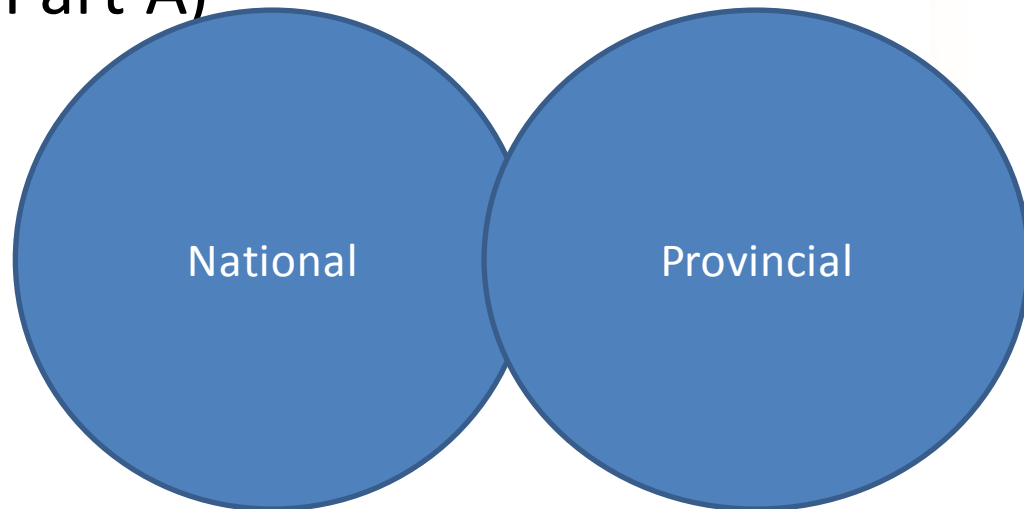
- Spheres of government



- Each sphere has specified legislative and executive competences in terms of the Constitution (Schedules 4 and 5)

Concurrent national/provincial executive competence (Schedule 4)

- Regional planning and development (Part A)
- Urban and regional development (Part A)
- Environment (Part A)



Exclusive executive competence (Sch 5)

- Provincial planning



Executive competence and power to make by-laws

- Municipal planning (Sch 4 Part B)



Municipalities

Powers of municipalities

S 156 of Constitution

(1) A municipality has executive authority over and the right to administer

(a) The local government matters listed in Part B of Schedule 4 ... ('Municipal planning')

(2) A municipality may make and administer bylaws for the effective administration of the matters which it has a right to administer.

‘Municipal planning’

‘ “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*. In that context, the term is commonly used to define the control and regulation of the use of land.’

Johannesburg Metropolitan Municipality v Gauteng Development Tribunal 2010 (6) SA 182 (CC) para 57

Spatial Planning legislation

Spatial Planning and Land Use Management Act
16 of 2013 (SPLUMA)

In operation 1 July 2015

Framework for spatial planning and land use
management in the Republic

Spatial Planning legislation

- SPLUMA regulations (*GG 38594* of 23 March 2015)
- Provincial planning legislation
 - Eg Draft KZN, Western Cape
- Provincial regulations
 - Eg Draft KZN, Western Cape
- Municipal bylaws (numerous examples)

SPLUMA repeals:

- Removal of Restrictions Act 84/1967
- Physical Planning Act 88/1967
- Less Formal Township Establishment Act 113/1991
- Physical Planning Act 125 /1991
- Development Facilitation Act 67/1995

SPLUMA – no parallel system

S 2(2)

‘Except as provided by this Act, no legislation not repealed by this Act may prescribe an alternative or parallel mechanism, measure, institution or system on spatial planning, land use, land use management and land development in a manner inconsistent with the provisions of this Act.’

Supersedes provincial planning legislation, where inconsistent eg

Land Use Planning Ordinance 15/1985 (C)	Western Cape
Town Planning and Townships Ordinance 15/1986 (T)	Gauteng, Limpopo, Mpumalanga
Planning and Development Act 6/2008	KZN
Black Communities Development Act 4/1984 (R1897)	Gauteng, Limpopo, Western Cape
Black Administration Act 38/1927 (GN R1886/1888)	Limpopo, Mpumalanga

SPLUMA – Development applications for planning permission

Development applications (s 41)

- (a) Change use, form or function of land eg (township establishment, subdivision, consolidation, rezoning etc)
- (b) Remove, amend or suspend restrictive conditions

Submitted to a Municipal Planning Tribunal (ch 6 Part B)

that makes a decision (amounting to an authorisation/permission)

SPLUMA – Decision-making considerations

42(2) When considering an application affecting the environment, a Municipal Planning Tribunal must ensure compliance with environmental legislation.

Planning permission and environmental authorisation

For most developments requiring an environmental authorisation/licence/permit planning permission is required

What possibilities are there for rationalising different authorisations?

SPLUMA: Alignment of authorisations (s 30)

Where an activity requiring authorisation ... is also regulated in terms of another law, the relevant municipality and the organ of state empowered to authorise the activity in terms of the other law may exercise their respective powers jointly by issuing—

- (a) separate authorisations; or
- (b) an integrated authorisation.

(2) An integrated authorisation ... may be issued only if—

- (a) the relevant provisions of all applicable legislation have been complied with; and
- (b) the integrated authorisation specifies the—
 - (i) provisions in terms of which it has been issued; and
 - (ii) relevant authorities that have issued it.

(3) The relevant municipality may regard an authorisation in terms of any other legislation that meets all the requirements set out in this Act or in provincial legislation as an authorisation in terms of this Act.

SPLUMA Regs: Alignment of authorisations (cl 17)

If a municipality and an organ of state elect to exercise their powers jointly ... , they may enter into a written agreement that -

- (a) identifies the duplication in the submission of information;
- (b) ... in the execution of a process (including public participation and intergovernmental consultation);
- (c) provides a framework to coordinate the procedures for applications;
- (d) determines the circumstances under which separate authorisations or an integrated authorisation will be issued; and
- (e) if the municipality and organ of state agree to an integrated authorisation, facilitates -
 - (i) the integrated submission, public participation and intergovernmental consultation processes... ;
 - (ii) assessment of applications by the municipality and the organ of state;
 - (iii) the publication of one notice indicating the decision of the municipality and organ of state ...

SPLUMA Regs: Alignment of authorisations (cl 17)

(2) A municipality may decide an application that, in addition to the approval required in terms of the Act, requires approval in terms of other legislation on the basis of a process prescribed under that legislation, but only if that process meets the requirements of the Act, applicable provincial legislation and municipal by-laws.

Provincial legislation

- WC Land Use Planning Act 3 of 2014 *Provincial Gazette Extraordinary* 7250 33 P/N 99/2014 (not yet in operation)
- s 67 (based on SPLUMA Regs)
- Draft KZN Spatial Planning and Land Use Management Bill 2015
 - s 5 (joint notice)

By-laws

Provisions differ, eg

Stellenbosch (cl 43 – joint notice)

KZN model bylaw (cl 5-6) joint notice

Tshwane - no provision

Problems

- A 'complex totality' of processes and procedures exists.
- There are overlaps, it is expensive and time-consuming.
- Project approvals stifled.
- There is uncertainty as to which authority must be approached first.
- Intergovernmental conflict may arise between the various competent authorities.

Solutions?

1. S 30 (SPLUMA) and s 24K (NEMA)
2. 'The fact that in this case mining cannot take place until the land in question is appropriately rezoned is therefore permissible in our constitutional order.'
(Maccsand (Pty) Ltd v City of Cape Town (CC) 2012 (4) SA 181 (CC) para 47).
3. Co-operative governance.



QUESTIONS?

Thank you...