

Environmental Law Association Annual Conference 2012

Session 5

Maccsand and its implications

**Integrating environmental & planning
considerations with specific reference
to the Western Cape**

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Overview

A. Maccsand Case

B. Western Cape Land Use Planning Bill

**C. Spatial Planning & Land Use
Management Bill**

**D. Implication for integration with these
Provincial and National planning laws
and NEMA**





A. Maccsand (Pty) Ltd v City of Cape Town and others (CCT 103/11) [2012] ZACC 7

THE FACTS

- 2007/2008: Minister for Mineral Resources granted Maccsand a sand mining permit for the Rocklands dune and Westridge dune (Mineral and Petroleum Resources Development Act 28 of 2002; MPRDA)
- The dunes are zoned as rural or public open spaces (Land Use Planning Ordinance 15 of 1985; LUPO)
- In February 2009 Maccsand commenced mining operations without having the dunes rezoned

**A. Maccsand (Pty) Ltd v City of Cape
Town and others
(CCT 103/11) [2012] ZACC 7**

INTERDICT APPLICATION

Cape High Court; SCA; Concourt

APPLICANT: Maccsand

FIVE RESPONDENTS

AMICUS CURIAE

- **Chamber of Mines**
- **Agri South Africa**

A. Maccsand case

- Issue 1: Does being granted a mining permit mean one does not need authorisation in terms of LUPO?
 - One must consider zoning (LUPO) before commencing mining activity
- Issue 2: Does a holder of a mining permit need additional environmental authorisations in terms of NEMA?
 - “No prospects of success” (par 53): 24C(2A) of NEMA: “The Minister of Minerals and Energy must be identified as competent authority (...) where the activity constitutes (...) mining (...)”

A. Maccsand (Pty) Ltd v City of Cape Town and four others

INTERPLAY

- MPRDA and NEMA**
- MPRDA and LUPO**

NARROW IMPLICATIONS

- Implications for env'tal & planning law**

WIDER IMPLICATIONS

- Cooperative governance generally**

A: Maccsand Case

- Why is LUPO relevant?
 - The case centres on **consent use** (Rocklands) & **restrictions imposed by the zoning scheme** (Westridge). Municipal plans and rezoning schemes cannot be overlooked.
 - MPRDA is not to undermine the powers of the municipal planning function, irrespective of its national competence.
 - Carries a Constitutional mandate → Municipal planning is designated as an exclusive competence of local government

A. Maccsand case

MPRDA – NEMA Interplay

„NEMA was enacted [to] co-ordinate environmental functions performed by organs of state. It also provides for “co-operative environmental governance by establishing principles... . . .NEMA was passed to establish a framework regulating the decisions taken by organs of state in respect of activities which may affect the environment”

Para 9

A. Maccsand case

MPRDA – LUPO Interplay

„...in terms of LUPO, mining may only be undertaken on land if the zoning scheme permits... If not, rezoning of the land must be obtained before the commencement of mining operations. The zoning that permits that land to be used for mining does not however licence mining nor does it determine mining rights. The role played by LUPO is limited to the control and regulation of the use of land” (Para 18)

A: Maccsand Case

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A. Maccsand case

THE OUTCOME

- Constitutional Court: Dismisses Maccsand appeal
LUPO and MPRDA function alongside of each other
MPRDA and LUPO fall under different spheres of government, which are under a constitutional obligation to exercise their powers in a manner that does not encroach on the geographical, functional or institutional integrity of government in another sphere

Agreeing with SCA

B: Land Use Planning Bill (Western Cape) to replace LUPO

Ch 2: Responsibilities of Provincial and Local Government

Section 2 Responsibilities of the two spheres of government

(1) A municipality is responsible for the activities [relating to] all aspects of spatial planning and development management in its municipal area except those activities defined as responsibilities of the Minister...

These “activities” include:

- developing municipal SDFs;
- Reviewing zoning schemes;
- Processing land-use applications

(2) The province is responsible for Provincial SDF's

C: Spatial Planning Bill (National government)

- Chapter 4: Spatial Development Frameworks (SDFs)
 - Sections 12 & 13 National SDFs and their contents
 - Section 14 Provincial SDFs
 - Sections 17 & 18 Regional SDFs
 - Sections 19 Municipal SDFs
- Chapter 5 Land Use Management
 - Section 22 Land Use Schemes

Take Home Points

- **Mining sector ‘bully boy’ a slap on the wrist;**
- **Individual landowner (farmer) some respite;**
- **Public sector (environmental and agricultural lobby groups) room to breathe**
- **Implications for fracking?**
- **Subdivision of Agricultural Lands Act 70 of 1970**
- **Implication for National & other provincial spatial planning laws?**

Future Generations of Miners

!!!???

