

KAS / NWU Bylaws Conference  
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# Municipal Bylaws in the Bigger Scheme of Things

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**Municipal bylaws in a scheme of things**

**Some requirements for municipal bylaw making and implementation**

**Qua vadis: what is to be done by whom?**

Local government **committed** to working with citizens and groups within the community to **find sustainable ways** to meet their social, economic and material needs and improve the quality of their lives...In future, **developmental local government must play a central role** in representing our communities, protecting our human rights and meeting our basic needs. **It must focus its efforts and resources on improving the quality of life of our communities**, especially those members and groups within our communities that are most often marginalised or excluded....

(White Paper on Local Government, 1998)

# S 156 of the Constitution

## Powers and functions of municipalities

- (1) A **municipality has executive authority** in respect of, and has the **right to administer**—
  - (a) the local government matters listed in Part B of Schedule 4 and Part B of Schedule 5; and
  - (b) any other matter assigned to it by national or provincial legislation.
- (2) **A municipality may make and administer by-laws for the effective administration of the matters which it has the right to administer.**
- (3) Subject to section 151(4), a by-law that conflicts with national or provincial legislation is invalid. If there is a conflict between a bylaw and national or provincial legislation that is inoperative because of a conflict referred to in section 149, the by-law must be regarded as valid for as long as that legislation is inoperative.
- (4) **The national government and provincial governments must assign to a municipality, by agreement and subject to any conditions, the administration of a matter** listed in Part A of Schedule 4 or Part A of Schedule 5 which necessarily relates to local government, if—
  - (a) that matter would most effectively be administered locally; and
  - (b) the municipality has the capacity to administer it.
- (5) **A municipality has the right to exercise any power concerning a matter reasonably necessary for, or incidental to, the effective performance of its functions.**

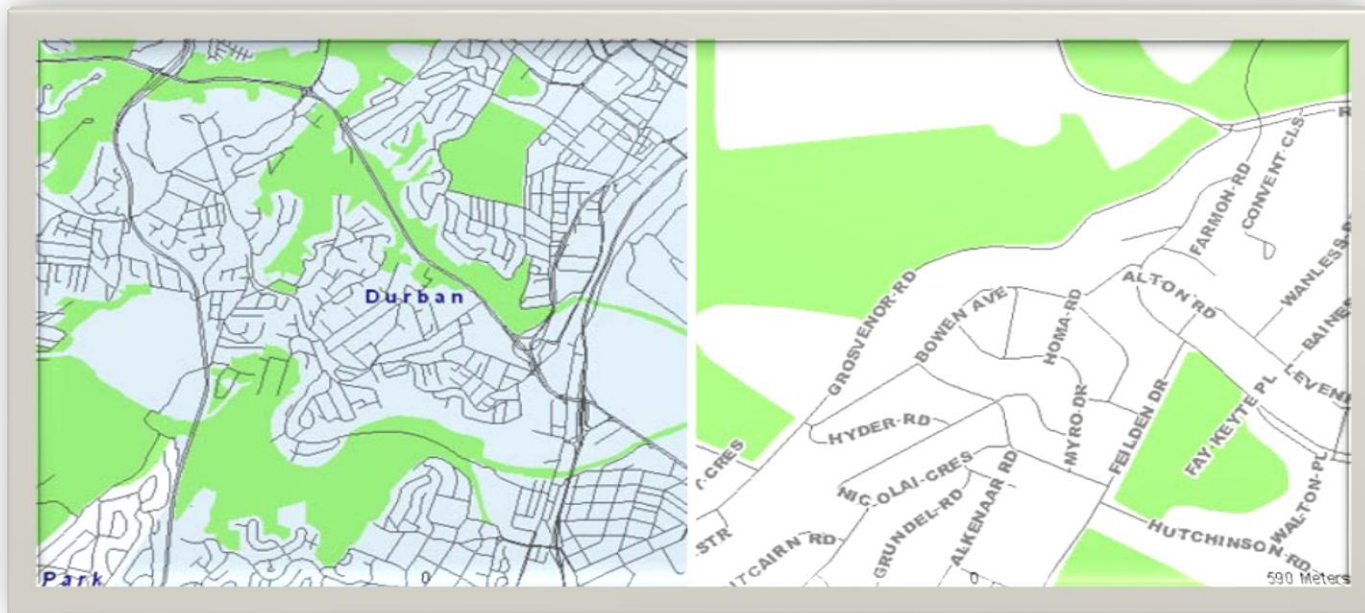
**“When plumbing the depths and limits of a municipal power, the constitutional promise of a local government that is equipped to initiate and to facilitate development should always be on the horizon.”**

**(Steytler and de Visser in Woolman et al, 22-48)**

# Fedsure Life Assurance and others v Greater Johannesburg Transitional Metro Council and Others (1998)



# RA Le Sueur v Ethekweni Municipality (2013)



**ENVIRONMENTAL PLANNING  
& CLIMATE PROTECTION  
DEPARTMENT**

**BIODIVERSITY | CLIMATE | PEOPLE**

# Marius Nel v Hessequa Local Municipality (2015)





“Given the constitutional authority of municipalities ... it is entirely within the power of the Respondents to make bylaws regulating boating on the public rivers in their areas of jurisdiction, and appointing and empowering officers to ensure compliance with the provisions of the by-laws. The fact that the Marine Living Resources Act also applies to fishing on the rivers and that the National Minister creates posts for fisheries control officers and confers law enforcement powers on them, does not create a conflict with the bylaws ... **what this means is that there are two systems of regulation – one national; one municipal – the former being confined to the regulation of fishing and the latter applying to non-fishing boating activities.**”

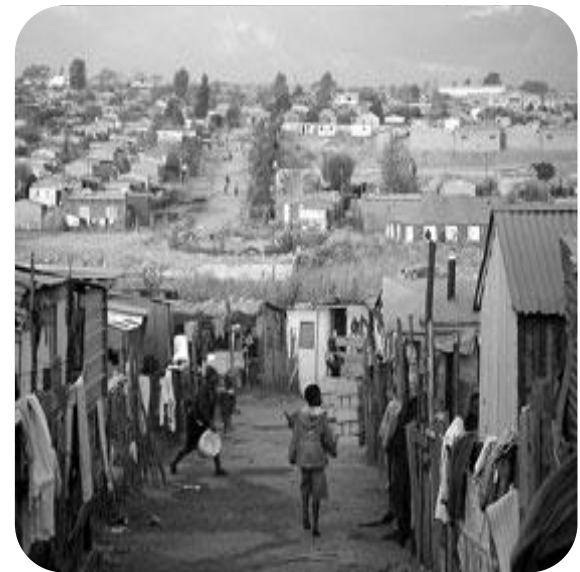
# Some requirements or key ingredients

- The purpose and function of bylaws must be understood
- Compulsory and other needed bylaws must be identified
- Lawyers with technical know-how to be involved
- Provisions in bylaws should be clear, detailed enough and enforceable
- Improved cooperative government
- Municipalities must be bold and should take initiative



# Qua Vadis

- Officials are important – very important
- State and status of municipal bylaws must be checked
- Teams
- Municipalities should share and collaborate
- Provincial and national authorities to support – on offer and on request
- Law Reform Commission / Task Team
- Courageous municipalities aware of their purpose



**Thank you**