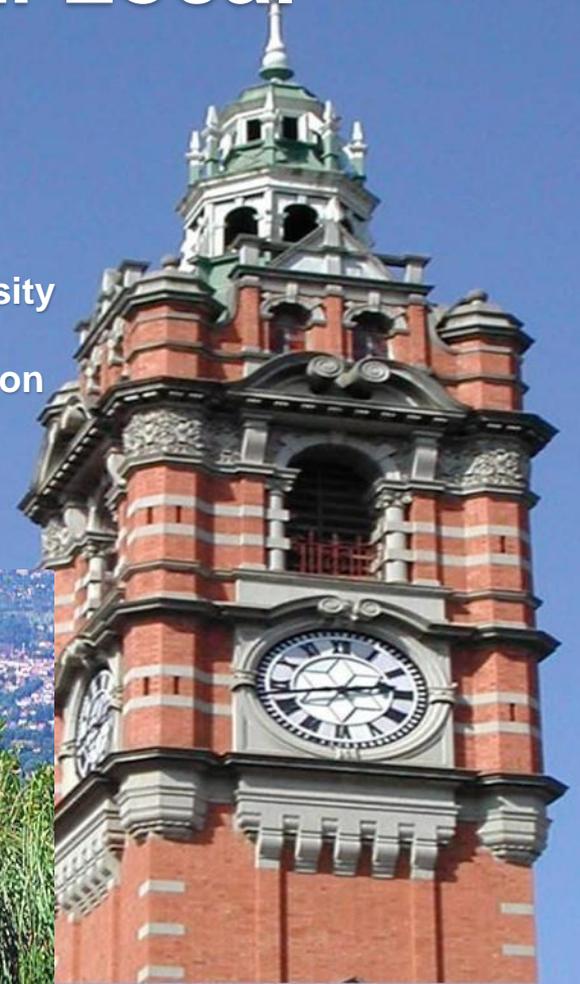




Constraints experienced in promulgating the draft Environmental Management By-Law for the Msunduzi Local Municipality

Konrad Adenauer Stiftung and North- West University conference on "Strengthening Local Government Legislative Authority in South Africa: Implementation of Bylaws."

21 July 2016



Background



- ❑ In 2007 Council adopted the Msunduzi Integrated Environmental Management Policy (IEMP). Section 7(e) of this policy states: *The Municipality shall:*
 - *7(e) develop and implement appropriate bylaws to give a force of law to the environmental policy.*
- ❑ Drafting of an environmental management by-law commenced in early 2015 using the North West province draft standard environmental bylaws as a base, particularly the standard biodiversity bylaw and the framework bylaw.

**Chapter 1:
Definitions &
Objectives**

**Chapter 2:
Environmental
Planning**

**Chapter 3:
Species posing a
potential threat
(alien invasive)**

**Chapter 4:
Msunduzi
generic EMPr**

**Chapter 5:
Restrictions:
General & for
sensitive areas,
riparian areas
and soil erosion**

**Chapter 6:
Applications for
authorization**

**Chapter 7:
Notices, appeals,
offences and
penalties**

Draft Environmental Management by-law

Chapters 2 - 4



Chapter 2: Environmental Planning

- Municipality must align its IDP, SDF and any other land use schemes with the Gazetted Msunduzi Environmental Management Framework (EMF) as well as any other environmental sector plans, policies and local norms and standards.

Chapter 3: Alien Invasive species

- Control and eradication of listed invasive species must be done in accordance with an approved alien invasive species plan, prepared in accordance with the requirements of NEMBA Alien and Invasive Species Regulations of 2014.
- control and eradication of species must be undertaken to cause the least possible harm to biodiversity and damage to the environment.

Chapter 4: Msunduzi generic EMPr

- development falls within 40m of a watercourse;
- a development in a sensitive area; or
- where such development and/or transformation of land may pose an environmental risk, threat and/or cause environmental damage.
- Monitoring of the EMPr will be the responsibility of the Municipality in conjunction with the person appointed by the applicant.

Chapter 5: Restricted Activities



General Restrictions

- Acts which causes or is likely to cause pollution or degradation of the environment.
- No person may fail to comply with any condition/s as stated in a (SLA) with the Msunduzi Municipality.
- Non-compliance with adopted norms and standards, approved environmental plans (i.e. environmental offset plans, alien invasive species management or eradication plans etc.) or approved agreements provided for in the Msunduzi Integrated Environmental Management Policy and this Bylaw is an offence.

Restrictions for sensitive areas

- disturb, damage, destroy or remove any indigenous vegetation.
- alter a slope or drainage pattern.
- erect, build or assemble any structure.
- wash him or herself, an animal or any object, including clothing and/or vehicles, in any watercourse.
- capture or attempt to capture, shoot at, injure, or in any other way disturb any wild animal.

Chapter 5: Restricted Activities



Watercourses & Riparian areas

- No person shall develop land without having obtained prior approval from the Municipality within 40m from a watercourse in accordance with the Msunduzi SDF or within the 1:50 year flood line as determined by a professional hydrological engineer.
- A buffer zone, determined by a qualified wetland specialist, must be created between the outer most wetland zone and any proposed development.
- A wetland rehabilitation and management plan shall be implemented by the developer within wetland systems contained in the development.

Soil Erosion

- No owner or occupier of land shall cause or permit to occur thereon, any soil erosion, which causes or may cause siltation of riparian areas, damage to adjacent or any other land.
- Municipality may serve a notice upon the owner or occupier of that land, directing him or her to undertake remedial measures or soil conservation works as may be specified in such notice.
- If the owner or occupier fails to obey the notice served upon him or her, the Municipality may undertake remedial measures required and recover the costs.

Chapters 6 - 7



Chapter 6: Application for municipal authorization

- Any person who wants to undertake a restricted activity in a sensitive area must apply in writing to the Municipality for permission to do so.
- Municipality may refuse the application or grant permission subject to certain conditions determined from time to time by the Municipality.

Chapter 7: Notices

- **NOTICES:** a delegated official of the Municipality may, in the form of a notice, direct such a person to cease such activity; suspend or withdraw a municipal authorisation, if granted; or take such steps as the Municipality may deem fit.
- **OFFENCES:** Any person who contravenes or fails to comply with a municipal authorization, a norm and standard, any plan/agreement;
 - commits a restricted conduct or activity prior to or without municipal authorization;
 - fails to comply with a lawful instruction given;
 - Submits inaccurate, incorrect or misleading information;
 - Obstructs or hinders a delegated official.
- **PENALTIES:** fine not exceeding R5 000 or imprisonment for a period not exceeding 1 month up to a fine not exceeding R100 000 or to imprisonment for a period not exceeding 1 year.

Consultation



- ❑ In July 2015 the Municipal Manager requested in terms of Section 46(2) of the National Environmental Management Act (Act 107 of 1998) *“any Municipality may request the Director-General to assist it with the preparation of by-laws on matters affecting the environment and the Director-General may not reasonably refuse such a request”*. On 13 August 2015 a senior legal administration officer was nominated by National DEA to provide the necessary legal support.
- ❑ A number of meetings were held with KZN EDTEA and National DEA from September 2015 – November 2015.
- ❑ Meetings with the Msunduzi: Legal Services Unit commenced in December 2015.
- ❑ Legal opinions obtained from other municipalities and representatives from the Law Society.

Constraints in passing the Environmental Management By-law: National DEA



- ❑ “Environment” is a functional area of concurrent national and provincial legislative competence (Schedule 4 of the Constitution). *It does not vests with the local authority. Further, conservation is not a local authority competence.*
- ❑ The Bylaw aims to regulate a number of environmental related areas, such as biodiversity, developments, sensitive areas .It is suggested that the Msunduzi Municipality should liaise with the State Law Advisors: Department of Justice and Correctional Services and *obtain a legal opinion with respect to the extent to which the municipality can include environmental regulatory provisions in their bylaws.*
- ❑ The by-law does not appear to be confined to functions that are the *mandate of local authorities, in respect of the Parts B of Schedules 4 and 5 of the Constitution*, such as public nuisances and air quality.
- ❑ “Municipal environmental services” - includes but are not limited to: water quality monitoring; waste management; air quality monitoring and management; noise control; environmental pollution control; sanitation services; safety against environmentally hazardous substances and/or activities; and conservation of natural resources.
DEA: This is not in line with Schedules 4 and 5 of the Constitution.
- ❑ The Council has the right to exercise the Municipality's executive and legislative authority in the environmental context.
DEA: In contradiction with Schedule 4 of the Constitution.

Constraints in passing the Environmental Management By-law: National DEA



environmental affairs

Department:
Environmental Affairs
REPUBLIC OF SOUTH AFRICA

Section 155(7)

“The national government, subject to, section 44 and the provincial governments have the legislative and executive authority to see to the effective performance by municipalities of their functions in respect of matters listed in Schedule 4 and 5, by regulating the exercise by municipalities of their executive authority referred to in section 156(1).”

Section 156(1)

“(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.”*

4. In this regard, sections 155 and 156 of the Constitution provides the municipalities with legislative and executive authority in respect of matters listed in Part B of Schedule 4 and Part B of Schedule 5. Environment is not listed either in Part B of Schedule 4 or Part B of Schedule 5 of the Constitution.

Constraints in passing the Environmental Management By-law: Internal Legal Services and COGTA KZN



- ❑ *The municipal by-law(s) must deal with only matters listed in Part B of schedule 4 and 5 of the Constitution.*
- ❑ *The environment is a functional area of concurrent national and provincial legislative competence as contained in Part A of Schedule 4 of the Constitution.*



cogta

Department:
Co-operative Governance and Traditional Affairs
PROVINCE OF KWAZULU-NATAL

- Section 151(2) of the Constitution of the Republic of South Africa, 1996 (“Constitution”) provides that the executive and legislative authority of a municipality is vested in its municipal council.
- Section 156(1) also provides that 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.
- Municipal councils may only legislate within the scope of the powers conferred upon them, which are outlined in Part B of Schedules 4 and 5 of the Constitution as mentioned above, failing which the by-laws would be invalid (**emphasis added**).

Way Forward



THE KZN BRANCH OF



IN CONJUNCTION WITH:



INVITES YOU TO A SEMINAR ON

"MUNICIPAL ENVIRONMENTAL GOVERNANCE & LEGISLATIVE COMPETENCE"

28 July 2016

Umgungundlovu Municipality Council Chambers (242 Langalibalele Street, Pietermaritzburg)

Parking will be available at 176 Langalibalele Street (former Longmarket Street). The Council Chambers are a short walk from the parking garage. Please ensure that you arrive early to avoid delaying the seminar.

Despite significant case law unpacking the roles, functions and mandates of local government, decision makers including legal and policy development officials, continue to grapple with roles and responsibilities of local government in relation to environmental management and governance.

The aim of this seminar is to consider the roles, functions and responsibilities of local government in ensuring the fulfilment of the environmental rights contained in section 24 of the Constitution and discuss the extent to which environmental governance can and should be implemented at the local government level through the development of legal instruments such as environmental bylaws.

Key questions:

- Is it legally acceptable and possible for a local municipality to develop and adopt legal instruments, such as by-laws, at a local government level to give effect to environmental management?
- If yes, how can this be achieved?



Thank You

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